IN THE COURT OF THE TRANSPORT TRIBUNAL

TRANSPORT ACT, 1947—PART V

IN THE MATTER OF THE APPLICATION OF THE BRITISH TRANSPORT COMMISSION (1953 No. 134)

TO CONFIRM THE BRITISH TRANSPORT COMMISSION (PASSENGER) CHARGES SCHEME, 1953

MONDAY, 16TH FEBRUARY, 1953
AND
TUESDAY, 17TH FEBRUARY, 1953

FIRST AND SECOND DAYS

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PROCEEDINGS OF THE TRANSPORT TRIBUNAL

MONDAY, 16th FEBRUARY, 1953

PRESENT :

HUBERT HULL, Esq., C.B.E. (*President*)

A. E. SEWELL, Esq.

J. C. POOLE, Esq., C.B.E., M.C.

Mr. HAROLD I. WILLIS, Q.C., Mr. E. S. FAY and Mr. KENNETH POTTER (instructed by Mr. M. H. B. Gilmour, Chief Legal Adviser to the British Transport Commission) appeared on behalf of the British Transport Commission.

Mr. H. V. LLOYD-JONES, Q.C. and Mr. LEON MACLAREN (instructed by Mr. J. G. Barr) appeared on behalf of the London County Council.

Mr. LEON MACLAREN (instructed by Mr. G. E. Smith, Town Clerk, West Ham County Borough) appeared on behalf of the County Boroughs of East and West Ham.

Mr. LEON MACLAREN (instructed by Mr. G. E. Smith, Town Clerk, West Ham County Borough) appeared on behalf of the South-West Essex Traffic Advisory Committee.

Mr. D. J. TURNER-SAMUELS (instructed by Mr. W. H. Thompson) appeared on behalf of the London Trades Council.

Mr. C. OSMOND TURNER (instructed by Messrs. Carpenter, Wilson & Smith) appeared on behalf of the London Passengers Association.

Mr. J. R. FITZPATRICK appeared on behalf of the Middlesex County Council.

Mr. DONALD G. FINCHAM (Deputy Town Clerk) appeared on behalf of the Southend-on-Sea Corporation.

Mr. W. J. LUXTON represented the Association of British Chambers of Commerce.

Miss D. D. FORSTER represented the Walthamstow Trades Council.

Mr. J. E. MORRISH represented the Post Office Engineering Union.

(*President*): This sitting is for one purpose only, namely to enable us to hear the Objections which have been raised by, I think, a dozen of the Objectors, that we have no jurisdiction to enter upon an investigation of this 1953 Draft Scheme, and anyone who by chance has come here expecting to discuss the merits or demerits of the Draft Scheme must act upon the footing that they will not be allowed to enter upon any such topic.

The course we shall take is this: As the sitting has been fixed on the application of the London County Council, we shall first hear Counsel on behalf of that Objector; after the London County Council we shall hear such other Objectors as are represented by Counsel and we shall hear them in the order of seniority of Counsel unless Counsel between themselves like to arrange some other order. We shall next hear any of the Objectors who are represented by Solicitors, and lastly we shall hear any of the Objectors who are not represented either by Counsel or by Solicitors. After hearing all the Objectors we shall, if necessary, call upon the Commission to reply.

The only other thing I need say is that we propose to adjourn at 1.30 p.m. for luncheon. The time at which we rise to-day will depend upon the stage the proceedings have reached.

Mr. Lloyd-Jones, I think you are appearing for the London County Council?

(*Mr. Lloyd-Jones*): I appear, with my learned friend Mr. Leon MacLaren, for the London County Council. Sir, I do not know whether you had intended to indicate at this stage the Counsel appearing for the other Objectors, or whether you are going to leave that over. I am not in a position to assist you at the moment.

(*President*): I hope that someone will be arranging for the list of Objectors who are represented by Counsel to reach us.

(*Mr. Lloyd-Jones*): If you please, Sir. As I have just intimated, I appear with my learned friend Mr. MacLaren for the London County Council at this preliminary Objection. I ought to say at once, of course, that as the Tribunal may or may not know but as is the fact, the London County Council has lodged a number of Objections, but by the Order which was made on the 6th February—an Order made by the agreement with the British Transport Commission—it was arranged that this sitting should take place, subject to the views of the Tribunal, to hear and dispose of this preliminary Objection.

May I say at the outset that I very much hope, and those instructing me hope, that the course which has been taken of seeking to deal with this fundamental root objection at this stage rather than at some later stage—possibly when an Inquiry might have been under way for a considerable period of time—is one which is sensible, courteous and in the interests of all parties concerned.

The Objection is one which I venture to think it is proper to raise at this stage before embarking upon a possibly protracted Inquiry, and if the Objection be held to be a proper one and a successful one, it will have the effect, no doubt, of possibly eliminating altogether the need for an Inquiry; but in any event, in my submission, of very largely circumscribing and limiting the ambit of any other form of Inquiry which might, in fact, result from the upholding of the Objection. I did hear the words which fell from you, Sir, in introducing this matter this morning, that this was not a Hearing of the merits of the Draft Scheme. I hope that nothing I shall say will in any way contravene the procedure and the ruling which you have laid down in regard to that matter.

I hope I can successfully avoid infringing that rule which you laid down at the outset of the Hearing, but none the less I feel sure that in so far as it is necessary—and in my submission it will be inevitably necessary—to investigate in some measure the purpose for which the Draft Scheme has now been put forward and in so far as that may or may not be concerning the merit, that is a matter which I can properly look at and deal with in due course, and I may be entitled to say this at least, that in putting forward this Objection the London County Council, as the Local Authority, a body representative of a very large class of persons who use the services of the Commission—I hope I am not departing from what you indicated, Sir, if I say manifestly now not only a large but exasperated populace—that in putting it forward, as I say, they are putting it forward not as a matter of mere obstruction but because the view is held that this Objection is valid, is well founded upon a proper construction of the relevant Sections of the material Act, and is in any event entirely meritorious in that plainly in the view of those instructing me, the Draft Scheme which has been put forward is not, in reality, a Scheme at all, but is in fact a series of proposals for alteration of an existing Scheme.

I venture to think, therefore, it would be right that I should say at the outset that the view which is held by this Objector, putting it briefly, is that the alleged Draft Scheme of charges is in fact a subterfuge adopted in order to avoid the consequences which follow by reason of the provisions of the Act from the putting forward of proposals for alterations; that it is a subterfuge, and

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indeed a species of fiction, and that this Court is entitled to hold that, first of all, it cannot entertain this Application and proceed to hold an Inquiry in regard to it, and secondly, allied to that, it should not and must not do so because in fact the alleged Draft Scheme of charges is, in the language more familiarly heard in the Courts of Law, one which on the face of it, as I hope to establish avowedly, is a frivolous and vexatious one, regarded as a Scheme of Charges rather than as a series of proposals for alterations.

May I, in order to make good some of those broad generalisations with which I have ventured to open this matter, and in order to substantiate my submission that the Objection is a serious one and based upon the provisions of the Transport Act, indicate how it came about, as a matter of background, that this Application for confirmation of a Draft Scheme of charges ever came to be made? I need not remind the Tribunal that it was on the 27th February, 1952, that it made its Order confirming the British Transport Commission's Passenger Charges Scheme of 1952. That was, as is commonly known, and as the Tribunal of course know better than anyone, the result of a very prolonged Inquiry and discussion of the various points of view and the various interests affected, towards the latter part of 1951.

The present Application is made as the result, or was in fact made on the 5th January, 1953, and it has been heralded, and purported to be explained, by a statement which was issued, and which I venture to say I am perfectly entitled to look at and to cite, by the Chairman of the London Transport Executive to the Press on the 5th January, 1953. In that statement, Lord Latham was at pains to make clear two main matters by way of explanation, and indeed defence, of the reason why this Charges Scheme had been put forward. Broadly speaking—I will cite it in a moment, Sir—the two points were that the Application was made only because it was forced on the London Transport Executive by pressure of "inexorable necessity." Those words are found in my copy, Sir; they may or may not be, in the copy of which the Tribunal have possession, on the very first page. It is therefore put forward as something not the result of the application of deliberate considerations of problems relating to transport charges, but as something dictated by events, and it is put forward, in my submission, as something which was unavoidable, if in fact the Executive, for which Lord Latham was speaking, was not to be faced with a deficit. In other words, it was put forward purely as a hand-to-mouth proposal, and not as a mature or considered plan, or design, or pattern in respect of the making of charges.

The note was struck and maintained throughout the publication to the Press that the thing had been, so to speak, forced upon them. That very language was used; it was "a violent pressure of events", and it was adopted by way of excusing this further demand upon the London public for further payments in regard to certain fares. I shall revert later, when I come to consider the material sections of the Transport Act, to the bearing and significance of that sort of approach upon the execution of the duty which lies upon the Commission in regard to matters of this kind.

The next note which is struck is that in fact the new incidence of the charges which are proposed, to use the expression which is reiterated by the Chairman of the London Transport Executive more than once, is that the charges are going to be "thinly spread", and there is throughout a note indicating that the new charges are to be, and must be, viewed as being, in their nature, of a modest character. The words "thinly distributed" are used more than once, and the modesty of the proposals is emphasised as being one of those factors which go to recommend them and to propitiate those who may otherwise find in the proposals much matter for criticism.

The whole amount with which the Chairman of the London Transport Executive was concerned was roundly, or roughly, about £6,000,000, and he was at pains to show that in fact it amounted to little more than the variation of certain charges that had already been fixed and were already in existence in the Order made in February, 1952; and, with respect, I would venture to adopt what was said in that as being manifestly and plainly the reason why this Scheme was put forward, but I would also venture most respectfully to say that if in fact it was dictated by "inexorable necessity", and if in fact the net result, as I shall endeavour to show by comparing the Draft Scheme with the Order of February, 1952, amounts to any more than the addition of certain figures in certain Schedules, then I submit it cannot be regarded as, and is not in its essence, a Scheme at all. It is simply—and I use the expression quite neutrally—the manipulation of a number of schedules for the purpose of increasing the charges; it is nothing more and nothing less than that.

In my submission that makes the whole of the proposal not a Scheme but in reality an alteration. I may cite as putting as pithily, as pregnantly and as precisely as it can be put, the view which I am inviting the Tribunal to adopt in this case, one observation which was made by Lord Latham in the course of his statement to the Press. Dealing with the topic of whether or not certain proposals which are to be made at the Inquiry were practical or not, and in trying to dispose of those arguments as not being in fact worthy of adoption, he used this expression: "This is one of the many instances in modern affairs when what seems obvious is in fact unreal", and I venture to adopt those words and say that the document which is put forward as a scheme and bears the title of a Draft Scheme, on the face of it, and obviously, might be regarded as a Draft Scheme; but, in the words of Lord Latham, "what seems obvious is in fact unreal", and upon investigation my submission is that this alleged Scheme is an unreality and a fiction. As I have said already, it is a subterfuge adopted because if it were an alteration, if it were in fact a series of alterations as suggested, it would plainly not have been possible, within the limited time before these proposals, for it to have been put forward at all.

(*President*): Whereabouts does that passage occur, Mr. Lloyd-Jones?

(*Mr. Lloyd-Jones*): In my copy it is on page 5 at the top; I am not sure which page it is in your copy. I have been at pains to show that on this particular matter, when Lord Latham was dealing with the question of off-peak hours. . . .

(*President*): Mr. Lloyd-Jones, you are choosing this phrase because it satisfies you as being a piece of rhetoric rather than for any other reason?

(*Mr. Lloyd-Jones*): I am choosing the phrase because I think it summarises extraordinarily well the language I desire to adopt. I hope I have made it clear that I am not using it with any immediate relevance, but only because it is a most convenient summary of what I am submitting to-day.

I desire also, in support of my submission, to say that this Scheme is in reality concerned with the making of alterations in the pre-existing Scheme and is not a new Scheme, or a Draft of a new Scheme, at all. I want to refer to another document which has been furnished within the last few days by the British Transport Commission to those instructing me; it is an explanatory statement, Exhibit "B.T.C.5.", relating to Exhibits "BTC 501" and following, and it was lodged on the 6th February of this year. I am not of course concerned to, and it is not my immediate business to, go through or analyse the contents of that document, but I am entitled to, and I do, rely upon one passage in it. It is under Section 2 at page 7, Sir, in my copy—Section 2 of "B.T.C.5."

(*President*): Paragraph 13—"Preserving assimilation of London Area Charges"..

(*Mr. Lloyd-Jones*): Yes, Sir. It deals with the objects and general principles of Part III of the Draft Scheme, which of course is the most material part, so far as London Transport is concerned, of the whole Scheme. It reads as follows: "The primary object of Part III of the present Draft Scheme is to increase the revenue derived from London Transport traffic by about £5,000,000 in a full year." I pause there to say that that is an admission—a simple, frank, admission—that this is the primary object of that most significant part of the Scheme, merely—I say merely—to increase the revenue. It goes on: ". . . and to obtain corresponding increases from passenger traffic on the London lines of British Railways. To achieve this the Draft Scheme provides for raising the average level of charge for London Area passenger traffic by less than one-tenth"—the note is again struck of the modesty of the proposal. Then: "It seeks to do this by distributing the additional charges as evenly and as fairly as possible over

all categories of passengers. It does not involve any major alteration in the pattern and relativity of charges first authorised by the London Area Passenger Charges Scheme which came into force on 1st October, 1950, and subsequently preserved by the British Transport Commission (Passenger) Charges Scheme, 1952, which came into force, so far as the London Area is concerned, on 2nd March, 1952 ".

The next paragraph, one sentence of which perhaps I may be allowed to read, is as follows: " In particular the Draft Scheme has been so framed as to preserve the principle of assimilation of the standard scales of charges on all forms of transport in the London Area, whether operated by the London Transport Executive or by the Railway Executive ".

I pray that in aid again as an avowal of the fact that this present Draft Scheme in reality admittedly does not propose to make any major alteration in the pattern. I go further; I submit it makes no alteration in the pattern major, minor or at all—the pattern remains and all that has happened, in my submission, is that there has been the simple process of the addition to certain fares —not to all, but to certain fares—of any sum from ½d. to 2d. in the case of most fares, or a flat rate in regard to season tickets.

The reference in that paragraph to the interim Scheme of 1950 does, in fact, lead me to make one further citation by way of giving background to the submissions I am going to make upon the construction of the Statute itself. The Tribunal, I know, will have it in mind and will recall that there was in fact used in regard to the 1950 Interim Scheme—the London Area Interim Passenger Charges Scheme—this language in the giving of a preliminary decision by your predecessor, Sir. I only have an extract from it, and my extract bears the number " 1950, No. 225." That was dealing with the 1950 Scheme, and I think it has been cited upon this kind of matter as canvassed before the Tribunal, certainly by my learned friend Mr. MacLaren, when the Inquiry was being held in 1951.

Quotations were made from this document and perhaps I may be allowed again to make a citation, apart from the citation which was made on that occasion. Your predecessor, giving the decision of the Tribunal at that time, used this language: " In coming to the conclusion that £79 m. is a reasonable sum which the present Scheme should yield we have had regard amongst other considerations to the following:—The Scheme is called an Interim Scheme only because some modifications may require to be made in it when a Passenger Charges Scheme is settled for the whole country in order to ' dovetail ' into the charges established by such Scheme. In fact it is in our view a final scheme determining the maximum charges to be authorised for the London Area subject only to the provisions of the Act relating to the alteration and review of Charges Schemes "—those are the material words, namely, " subject only to the provisions of the Act relating to the alteration and review of Charges Schemes ".

Then it goes on: " Accordingly, we have looked beyond the year 1951, and assumed that, as by degrees steps are taken to secure a properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods, economies will progressively be effected which may be expected to redound to the benefit of the users of the different services of the Commission including the users of the services to which the Scheme relates ". He goes on: " We understand that the Schemes for the country as a whole are not likely to be ready for submission to us for some time; thereafter a further and considerable period must elapse before they are finally approved and brought into force. By then the present Scheme "—that is speaking of 1950—" may have been operating for some years and the financial requirements of the Commission may have altered to an extent requiring a re-assessment of the contribution London ought to make ".

I do not think I can usefully cite anything else, Sir, but there again a declaration of the Tribunal plainly envisaged that a Charges Scheme was something which laid down a plan, design or pattern, or whatever word one may choose to use in this context, that there might be room in due course for some alterations to be suggested in its operation. But the plan was to be laid down and it was anticipated that it would be a lasting plan until the time came for a major review of the whole position, with the possibility of setting out on the task of framing an entirely new Scheme upon the new pattern. In reality, in my submission, that was a perfectly proper and indeed wholly justified forecast of the future. It was said in one of the documents which were used in the last Inquiry that prophecy is difficult—and indeed prophecy is difficult; but difficulties which have arisen in regard to the raising of revenue are not, in my submission, in the least difficulties which relate to any major or to any alteration of the conception or the pattern which was laid down and which was properly laid down, in my submission, in 1950. The attempt to alter it in 1952 is something which the Tribunal knows well, and I must not travel into that matter. It would seem by implication that the Tribunal rejected the submissions made in 1951 to the effect that that approved Scheme was also in reality not a Scheme; but whatever may be the case with regard to that, I do submit that now in absolute nakedness it has been revealed that this present proposal, if I may use that neutral term, is simply the attempt of an embarrassed person to get himself a little more money when times are hard and difficult, and it is no more fitting to describe the action that has been taken as a Scheme than it would be to say of a starving man who broke a window and took a loaf that he would thereby be laying down a pattern of a way of life that he should follow. He would in fact be living from hand to mouth; whether he would be justified or not is a matter for moral theologians and lawyers; but it would be a mockery to describe what he did as laying down a way of life for himself and his family—he would be moved only by his immediate and present needs.

I have endeavoured to show that there is in the background of the whole of these proposals nothing of necessity, of which it has been said proverbially that it is at once the mother of invention and that it knows no law. In my submission, the necessity which admittedly has led to the formulation of this present Scheme has led to the invention of the Application, and that if you merely stamp and label a document a " Charges Scheme ", that is sufficient to give it the character of a Charges Scheme; and also it knows no law in the sense that it obviously contravenes the provisions of the Transport Act which are material to these matters.

Having introduced the matter—I hope not in any way thereby offending against the rule which you laid down at the opening, but because I think it is strictly material, when one comes to construe the sections, to look at what in fact is being suggested so that one can apply the principles of those sections of the Act to those facts— I hope I may now turn, with your permission, to the Act itself, with which the Tribunal is so familiar that I propose only to go at once to that group of sections which began with Section 76 of the Transport Act under the heading of " Charges Schemes ". Before I do that, may I say that, as I understand it—and I speak, of course, subject to correction in this matter—the policy upon which those sections appear to be founded is a policy which enables three forms of consideration of charges to be dealt with by the Tribunal. In the first place, you have the formulation of a Charges Scheme itself as provided for in Sections 76 and 77; there is then the provision for the confirmation of draft Schemes; the next provision is for the alteration of Charges Schemes, in Section 79, and then there is in Section 80 the provision for the review of Charges Schemes; and in this context I would like also, if I may, to make reference to the Tenth Schedule of the Act, paragraph 4, and to Rule 48 of the Transport Tribunal Rules. I think, so far as I am instructed, that those broadly are the various provisions which are applicable and which may be resorted to in regard to the Charges Schemes, but I will come to that in some detail in a moment.

I think the most convenient way to seek to put forward my submissions to the Tribunal is, first of all, to look at the language of Section 79, and then to re-trace my steps and to revert to the earlier sections. Section 79 is the section which provides that an application for an alteration of a Charges Scheme can be made in these terms: " An application for the alteration of a charges scheme may be made to the Transport Tribunal either—(*a*) by

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the Commission; or (*b*) by any body representative of any class of persons using any services or facilities to which the scheme relates, being persons whose interests will be affected by the alteration"; and it goes on to make provision in regard to other bodies with which for the moment I do not propose to trouble the Tribunal, because Section 79, subsection (1) (*a*) and (*b*), is sufficient for my purpose to illustrate the submission that I have to make.

What emerges is that there, not only the Commission has the right, and possibly the duty, to make an application for an alteration, but there is a right conferred also by subsection (1) (*b*) upon public authorities such as that which I am here to represent to-day, and so far as I am aware it is the only plain instance in which it is competent to others than the Transport Commission to effect by recourse to this section any alteration in a Scheme. In those circumstances, therefore, the right which is given is a bi-lateral right both to the Commission and to others who may be affected; but it is also right to observe that the section proceeds by a proviso: "Provided that the tribunal shall not entertain any application under this section for the alteration of any scheme" —you will note, Sir, "shall not entertain"; in my submission, those words are prohibitive—"if (i) less than twelve months have elapsed since the coming into force of the scheme".

Pausing there, my submission on that part of the proviso is that this is an essential condition for conferring upon the Tribunal a right to entertain any application for an alteration; it is a limit of 12 months, and it is a limit which would apply to the Commission as well as to any other class of person; and in my submission it is a necessary pre-condition to the entertainment of any such application. In my submission it would plainly not be competent, if I may say so with the greatest respect, were this Tribunal to-day concerned with an application for an alteration, for them to entertain it at all as they have entertained this draft application for a Scheme. I submit that as in fact the Scheme which was laid down by the Order of the 27th February, 1952, by its terms provided in paragraph 5 that certain parts should come into force on the 2nd March, 1952, and that other parts should come into force on the 1st May, 1952—and 12 months have not elapsed since either of those dates. Therefore, in my submission, it is unnecessary to elaborate the point that any application for an alteration could have been properly entertained, because less than 12 months have elapsed since the coming into force of the Scheme.

May I also make one submission now once and for all; it is that, in my submission, the Scheme as a Scheme cannot be said to come into force in any possible sense until the 1st May, 1952. It is true that parts of it were stated to have had their commencement according to paragraph 5 of the Order of February, 1952, on the 1st March; but in the strict construction of language which I invoke, in my submission the Scheme did not come into force until the 1st May. If, therefore, I succeed, as I hope to do, in showing that in reality and despite appearances what has been put forward as a Scheme is in fact an Application for alterations, then on the face of it the Application was put forward at a time when this Tribunal could not entertain it.

It is fair and right that I should go on to read the other provisions of that proviso, or the further expansion of that proviso. The first one is a time limitation, and in my submission nothing that follows cuts down or in any way detracts from that. Then it goes on: "or (ii) in their opinion the application relates to a matter which has been the subject of consideration by the tribunal within the twelve months immediately preceding the making of the application". I think again that it would be right to say, subject of course to the Tribunal's own knowledge of its deliberations, that it might be—although I do not need to avail myself of that—that this present application was entertained within a period of time which offended against that second limb of the proviso.

Then it goes on: "or (iii) in their opinion the alteration is one which owing to its magnitude ought not to be made except by an amending scheme or as the result of such a review as is provided for by the next succeeding section". I just desire to say this in view of what was canvassed on a previous occasion in relation to the third limb of the proviso, that it is plain that any question of magnitude or importance does not and cannot arise, unless the Tribunal is in terms asked to deal with an application for an alteration. It is only if and when an application is made in the form of an application for alterations or alteration that this question of the magnitude of what is being sought to be done can possibly arise, and if in such a case it should arise, then it is a question for the Tribunal to decide whether or not it can, having regard to what it may consider the magnitude of the alteration, deal with it as an application for alteration, or deal with it necessarily as a matter requiring an amending scheme, or as a matter for review; but that only arises if the Tribunal is aproached with an application for an alteration—it has no bearing at all where, as here, in form the application is one for a Charges Scheme.

(*President*): Is that so, Mr. Lloyd-Jones?

(*Mr. Lloyd-Jones*): I think so, with respect, Sir.

(*President*): If I understand your submission aright, you are saying that an application of this nature ought to have been under Section 79?

(*Mr. Lloyd-Jones*): Yes, Sir.

(*President*): Suppose we were of the opinion that if it had been made under Section 79, and suppose we had formed the view that owing to its magnitude it ought not to have been made under Section 79, what could we do?

(*Mr. Lloyd-Jones*): I think, with respect, you would look first of all to see how it is put forward. If it is put forward as an application for an alteration, you must apply for a time scheme; if it does not fall within the time scheme, you cannot look at it. With respect, you have no jurisdiction; the words are "shall not", and you have no power then to say: "Well, it would look very much nicer if we now treated it as an application for a Scheme". In my respectful submission, the language of the proviso excludes your jurisdiction in relation to a time scheme as specified.

(*President*): To take it a little further, in your submission this supposes that it has taken the form of an application under Section 79; it means two things, first of all that of their nature they are applications for an alteration, and secondly, that they could be made the subject of an application?

(*Mr. Lloyd-Jones*): Yes, Sir.

(*President*): And if we were of opinion that of their nature they could not be made the subject of an application, what happens next?

(*Mr. Lloyd-Jones*): If I may say so with respect, Sir, nothing happens next. The Commission must wait until in the fullness of time it is competent for them to put forward an application for an alteration to which the Tribunal will direct its mind and say: "We think you ought to make this an amending scheme and not an alteration".

(*President*): In other words, we ought to say that in May you ought to have proceeded by an amending scheme which in February we had held was outside our jurisdiction this year?

(*Mr. Lloyd-Jones*): Yes, Sir. With respect, if I may venture to aspire to put myself in the frame of mind of the Tribunal, you would hold it to be outside your jurisdiction *simpliciter*, without giving any reason, saying simply: "This is an application for an alteration; we are not allowed to hear it", without holding any views about it at all; it is purely a point of jurisdiction.

(*President*): It would be a curious result I think—so curious as to suggest that there might be something wrong in the construction of the section, if in February we came to the conclusion, looking only at proviso (i), that this Scheme ought to be called an amending scheme and ought to have been put forward at a later stage as an alteration, and then when it was put forward as an alteration at that later stage we then found that our eyes were opened, or allowed to be opened, and we looked at proviso (ii) and decided, after all, that it ought to have been done by an amending scheme, and could have been done in February.

(*Mr. Lloyd-Jones*): Yes, Sir. Those are some of the tragi-comedies which are the consequences of the proper construction of the section; but in my submission it

must be so, and it is no more curious than the reverse position with which I now propose to deal. That is that in the guise of putting forward an application for a Charges Scheme it would seem possible for the Commission to render completely null and nugatory the provisions which enable persons other than themselves to make an application for an alteration, because there is no actual time limit imposed in regard to an application for a Scheme. That is one of the things which I anticipate will be put against me, and I certainly cannot point to any time limitation upon an application for a Charges Scheme. The consequence of it is that we might find ourselves, taking the body whom I am representing, in this position, that if at any time it might be thought that we were desiring to make alterations in regard to the Charges Scheme—although the Commission are the only persons who are entitled to ask for a Charges Scheme—the Commission could immediately step in with an application for a Charges Scheme and thereby defeat any possibility of a public authority or other Objector getting their Objection considered. No one would consider an alteration of a Scheme which was liable to be changed, altered or possibly revoked completely at the instance of the Commission.

(*President*): Why could not the County Council or any other class of statutory Objector have the alterations they had in mind considered when the Commission brought forward an amending scheme?

(*Mr. Lloyd-Jones*): They might or might not be *dominus litis*, in the sense that they had been enabled to put forward their conception of the alteration.

(*President*): Does it make any difference whether they are *dominus litis* or not as long as the alteration which they wish to suggest is considered? I have not observed that the status of being *dominus litis* has any effect on the cogency of the argument to which consideration may be given.

(*Mr. Lloyd-Jones*): There you have the advantage of me, Sir; my memory is not so well charged with the many discussions which have been indulged in in the past. I come to-day with a somewhat fresh, if not virgin, mind. I do suggest that the Act itself plainly gives a substantive right under Section 79 to such bodies as that which I represent, to ask for such alterations. The submissions which I am putting forward may lead to inconvenience; but I submit that if the time limitation has been laid down for some reason, there must have been some purpose behind that limitation of twelve months, and it could, in my submission, be completely defeated, so far as other persons and bodies are concerned, if in fact the Transport Tribunal did what they are in the habit of doing, that is to say, hearing an epidemic of Charges Schemes of this kind, and I submit that that is one of the possible consequences.

The other possible consequence is that it is to be observed, when one looks at Rule 48 of the Transport Tribunal Rules, there is a provision again with the same time limitation. That Rule reads as follows: "The Court may review any final Order or decision of the Court on the ground that the circumstances have changed. Any person interested may apply for such review ex parte not sooner than one year after the making of such order or decision, and Rule 12 shall apply". Again you have the same limitation in regard to anything that is in the nature of a review or possible alteration of the provisions of some scheme that has already been conferred, and the duty, if I may so put it, of these sections dealing with the Charges Schemes is that there is no fixed rigid time limitation imposed upon the Commission in regard to the putting forward or of the preparation of Charges Schemes —that is the point.

If one looks at Section 76 of the Act one sees: "The Commission shall from time to time prepare, and submit to the Transport Tribunal for confirmation, drafts of schemes (hereafter in this Act referred to as 'charges schemes') for determining, as respects the services and facilities provided by the Commission to which the schemes respectively relate—(*a*) the charges which are to be made by the Commission; and (*b*) where it is necessary or expedient so to do, the other terms and conditions which are to be applicable to the provision of those services and facilities," and so on. I would draw your attention, Sir, to that expression "from time to time"; if in fact the Commission are to be allowed to say: If we want to make certain alterations; if we want a later review, we want to do it, for reasons best known to ourselves, within the twelve months, and to do that all we have to do is to call it a Charges Scheme. What the reason in the present case may be one does not know; but obviously there is some dominant reason for wishing to do this before the expiration of the period of twelve months, and it is sought to be done by this device of calling what is in fact an application for a modification, a scheme, and taking advantage of the language in Section 76 that the Commission "shall from time to time prepare, and submit to the Transport Tribunal for confirmation, drafts of schemes (hereafter in this Act referred to as 'charges schemes')", and the absence of any limiting period of time, in order to assist them in their particular objective. My submission is that the first thing one has to do in construing the Sections which run from 76 to 79 is to bear in mind what a Charges Scheme is. What satisfies the definition of a Charges Scheme, or leads up to what the Act appears to lay down as the conditions of a Charges Scheme? Some assistance is given by Section 77 as well as by the Section which I have just quoted, Section 76, because Section 77 deals with the contents of a Charges Scheme. That Section reads: "(1) A charges scheme may, as respects any of the services and facilities to which it relates,"—

(*President*): Is it consistent with your argument to take, as being a concrete example of what a Charges Scheme is, the one which was confirmed in February of last year?

(*Mr. Lloyd-Jones*): Yes, Sir.

(*President*): I did not know whether you were prepared to concede that that is a Charges Scheme within the meaning of the Act. If you are, we can take it as a concrete example of a Charges Scheme.

(*Mr. Lloyd-Jones*): Yes, Sir; you may take it that I do concede that.

(*President*): I think you would be in great difficulty if you did not.

(*Mr. Lloyd-Jones*): I am not unaware that a great effort was made to prevent its coming into being; but since it was put forward as a scheme, I must perhaps in good grace accept it as a scheme. I shall in due course call attention to the similarity between it and what is now being put forward.

(*President*): You see, the similarity of the present proposals to the existing scheme does not seem to me to be the only aspect of the new proposals, which has struck the mind of the public most up to the moment.

(*Mr. Lloyd-Jones*): That may well be, Sir, but the public mind is just righteously indignant, and it may not have examined all the minutiae of the scheme as I have had to do. I would analyse it, if I may, in this sense, that I think I shall be able to show that you have virtually a most sedulous reproduction in the present draft Scheme in the very language of the existing Scheme almost without exception; you have the same phraseology adopted and the only differences are differences which come in within the Schedules, and they are differences which relate to the raising of certain fares.

(*President*): It is rather like the annual Finance Act; the language seems to be very similar except when you come to the words which decide what tax you have to pay.

(*Mr. Lloyd-Jones*): Yes, Sir. If you look at the present proposals, there is nothing which could possibly be said to fall within the early part of Section 77, which says: "A charges scheme may, as respects any of the services and facilities to which it relates, adopt such system for the determination of the charges, or, as the case may be, the charges and other terms and conditions, which are to be applicable as may appear desirable, and in particular and without prejudice to the generality of the foregoing words, any such scheme may, as respects any of the services and facilities to which it relates", and then it goes on to deal with the possible provisions, standard charges, minimum charges, terms and conditions, and so on and so forth.

What I desire to say at once is that the whole of Sections 76 and 77 envisage, in my submission, that there is an attempt not merely to add to various charges because you are in financial difficulties, but they envisage a deliberate attempt to study the whole of the problem not merely in relation to whether or not you have any inexorable necessity to add to your charges in order to get your revenue, but I submit it conjures up the picture of the leisured

contemplation—and perhaps that term can be accepted as not in any way offensive—of possibilities of alterations, the dwelling upon various alterations, and in the result the production of something which is at least different in pattern and design from that which previously existed. I submit a very homely simile in this case is that if I went to a tailor and asked him to make me a new pair of trousers, that would be a very different thing from asking him, as I may well be in danger of asking him, to alter them so that I may be able to get into them with greater facility. One is an alteration; the other may be a different design, cut to a different conception by a different person. In my submission, what happened in this case is a mere enlargement of the arithmetic and nothing else, and I do submit that it goes to the right of persons who are in the position of the London County Council to insist upon having consideration given to the Scheme. It may be that upon this kind of dubbing or labelling of any document which makes any alteration "a Scheme", it is possible completely to frustrate persons who are in the position of the London County Council and who may desire to effect certain alterations.

(*President*): As I have already said, I simply do not understand what that submission means. How is the London County Council frustrated by the submission of proposals of this kind?

(*Mr. Lloyd-Jones*): Because in my submission it must be clearly an advantage for any person before any Tribunal to be in the position of formulating exactly what he wants to formulate rather than endeavour to insinuate by way of criticism the position he holds before the Tribunal. I submit that the Act gives me the advantage—and it must be an advantage—of presenting one's own case rather than being forced into the position of being the critic who intervenes, not formulating necessarily at his leisure what he desires to put forward, but having to take the existing scheme and having to make his critical comments on that. I submit that the Act has given the power, and the Act must have it in contemplation, that it was a power and something which ought to be preserved, whether or not that goes to the question of whether it is a valuable right; but what I am submitting as being incontrovertible is that, whether it is valuable or not, it is a right which can be frustrated and circumvented by the user of this form of general application by the Commission. I am not for the moment on the question of the consequences; I submit it is conceivable that over a period of years the Transport Commission, simply by calling a document a Scheme, can completely frustrate the power of the London County Council or other similar bodies in this matter.

You invited me to accept, as I have to do, the fact that the 1952 Scheme is a Scheme. If one compares the draft which is now before the Tribunal, and which is now under consideration, I do submit that I am entirely borne out in what I have said. If I am wrong, my learned friends can correct me, but I am saying that, save for the omission of such matters as are necessarily omitted from a draft as opposed to a settled scheme, if you read the draft documents, you will find that they are in entirely the same language; they are a reiteration of what has gone before.

The differences come in in the matter of charges, and I do not suppose that my friends who appear for the Commission for a moment desire to say that simply because one is larger than the other, it makes no difference; it is one of the few really distinguishing features, save for some charges which are greater in the present draft. Lord Latham, in the document which I cited, was able to summarise in his statement to the Press the effect of the new document—if I may use that neutral term about it—in a very short paragraph, so far as it concerned the London Area. He was able to say that the details simply went into less than half a page of his statement; but the body of the two documents is indistinguishable. There are two paragraphs which are necessarily omitted from the draft, because it is a draft; and the two paragraphs, as I understand it, which are necessarily omitted, are: Paragraph 10 of the February Scheme, because that paragraph was dealing with future events referable to that Scheme, and if I may, I will just refer the Tribunal to that. Paragraph 10 of the February Scheme was necessarily omitted from the draft——

(*President*): I do not quite understand why something corresponding to Paragraph 10 could not properly have been in these new proposals. It would not have been Paragraph 10 as it stands, of course.

(*Mr. Lloyd-Jones*): Of course, Paragraph 10 is in essence dealing with what might be done up to a certain time and what might not be done before a certain time; I think that is really why Paragraph 10 does not find its place in the draft Scheme. Paragraph 10 is the kind of thing which is inserted after the Inquiry and after the Tribunal has brought its mind to bear upon the problems.

(*President*): I do not think so. Paragraph 10 in the existing Scheme certainly did not come into being as an insertion in that way. Something corresponding to Paragraph 10, although not in the form of Paragraph 10, was in the Scheme which we considered. As a result of the Inquiry, whatever number it had in the Scheme as lodged, it became Paragraph 10, but there is no reason on its nature why there could not be in the existing proposals limitations of the same sort as there are in Paragraph 10. In fact, if this Inquiry went on, we should not be surprised if your clients did not suggest something.

(*Mr. Lloyd-Jones*): That may be; I said that it was necessarily omitted there.

I think Paragraph 39 is the other one, and I will just call attention to it without using any expression of opinion as to why it is not there at the moment.

(*President*): That is the record?

(*Mr. Lloyd-Jones*): Yes, Sir; and it is to be observed there that the Commission is to preserve until the 1st May, 1953, which assists me in my submission that that date is the date when the Scheme, as a Scheme, comes into operation. It is for the preservation of records and charges, and so forth, and the fact that there is no parallel provision may mean that even the sedulous copyist became fatigued and omitted both paragraphs; but in my submission those are the only two matters in which there is any difference in the text as opposed to the actual charges which are made. There is the same number of Schedules, some of which I think I am entitled to say are an absolute reproduction, both as to their nature and as to their contents.

Making one's way somewhat wearily through the various paragraphs and the schedules, one hoped one would find something different with regard to luggage charges, but there is not even that excitement to be found.

In substance you have a document which is reproduced, so far as Paragraph 10 is concerned, in the February document; my submission about that is that it is simply a limitation linked with the particular time—it is a temporary limitation, and not one that goes to any principle, and in my submission there is nothing at all in the draft Scheme which is now before the Tribunal which invokes any question of principle at all; it is simply an attempt to make an addition.

The statement of the Chairman of the London Transport Executive was that in reality certain things were being preserved; it was the note of preservation and modesty of the necessary changes, as I have already indicated, that was stressed; and he summed it up, and his summing up of what the proposals in fact meant is as set out in his statement to the Press, which there is no need for me to read to the Tribunal. I submit that it only goes to the quantum of the charges being made, without any new orientation of the mind of the draftsman towards any of the problems of London Transport; it is simply an attempt to raise more revenue—looking at various sources of revenue, and by making additions here and there to the existing rates of fares, and there is no new principle—no disturbance of principle—simply the mere addition of sums of money to those which already existed. In my submission, Sir, that does not constitute a Scheme; that is precisely what the Act must have meant and contemplated when it talked about an "alteration", and this, in truth and in fact, is an Application for an alteration and in no sense is it to be designated a "Scheme" within the meaning of what the Act appears to have required the Scheme to be.

I have made my submission; I repeat what was put very much more cogently on the occasion of the last Inquiry by Mr. MacLaren; I am not going to repeat it verbatim, but he then pointed out that a Scheme of its essence implied and involved something in the nature of a pattern. I say of the present Scheme that it involves no change of pattern as such. Perhaps I may be forgiven for saying that it does not involve much change of patter

either, but the plan and system are, on the face of them, the same plan and system. The Scheme implies—indeed the Act itself talks about "system"—that the mind should be addressed to the consideration of a system. The dictionary meaning, as my friend said on the last occasion, does not help; but one definition of a Scheme is: "A system of co-related things, institutions or arrangements". Another, and somewhat less favourable and unworthy, interpretation of the word is that it may be a plot; and in my submission it may be a plot in the sense that the Scheme, being a subterfuge, may be a plot, but only in that sense, in my submission—in that unflattering sense—could it be called a Scheme.

(*President*): That is why I asked you when I thought you were about to consider in the abstract what a Charges Scheme should look like. I thought you agreed that we could take the 1952 document as being an exemplar, at any rate, of a Charges Scheme—and I think you said that it was a Charges Scheme.

(*Mr. Lloyd-Jones*): Yes, Sir. If I may say so with respect, I am constrained now to say that it is a Scheme. Whether it should have taken that form is quite another matter; I say that with all deference and respect. When you put to me that it is an exemplar of a Charges Scheme, I say that without consideration of its predecessor with regard to the London Transport Executive, I do not desire to travel into that—and I am not competent to do so. But it would seem that I must start with that.

(*President*): I am not interested in whether it is well drafted, or whether the pattern could or could not be improved; the real question is: Does it satisfy the provisions of Section 77? Is it a document which may readily be described as a Charges Scheme in the sense of those words as they are implied in the Act?

(*Mr. Lloyd-Jones*): On the face of it, it is, but it involves the great difficulty that the argument was advanced and was never abandoned, that the proposals then put forward did not amount to a Scheme, and so far as I am aware, only by implication producing this document, did the Tribunal reject that contention.

(*President*): Yes; any contention which is inconsistent with this document was rejected by implication.

(*Mr. Lloyd-Jones*): Yes, Sir.

(*President*): But if this document, which is now printed and which is in operation, is not a Charges Scheme within the meaning of the Act, rather startling consequences would occur, would they not?

(*Mr. Lloyd-Jones*): I repeat that I cannot in any way revoke what I have said—that it is a Charges Scheme; but, even so, in my submission the new proposal which is expressed to be a revocation of that, if in fact it reproduces it almost in its entirety, save for a certain number of additions of a halfpenny or a penny, whatever it may be, my submission is that it is making a mockery to say that the second document is a Scheme. Even if I have to concede, as I have to, that the first document is a Scheme——

(*President*): Does it not depend on the fact that the changes to be observed in the new document are almost entirely changes in figures? I am not taking the point that if they were expressed in words it would involve a change.

(*Mr. Lloyd-Jones*): No, Sir; nor if they were expressed in, for instance, Roman numerals.

(*President*): Would the fact that the difference between the existing Scheme and its counterpart in the new proposal was that the figures were larger, make any difference to your argument?

(*Mr. Lloyd-Jones*): I submit that before you talk of a Scheme, you must postulate that someone must address his mind to a pattern of charges in regard to the picture as a whole; it involves the addressing of the mind to the formulation—I said at leisure, and I repeat it—and full consideration of the various factors which are involved. In my submission it involves all that, and I would like to answer your question by referring—it may be unfair to do so in his absence, but I am tempted to, and I fall into the temptation of citing not verbatim, but referring to what Sir Malcolm Trustram Eve said on the last occasion on page 46 of the transcript of the hearing. On that occasion he saw fit, as an exordium of his detailed consideration of the problems involved, to lay down a large number of principles. He felt, I submit because he was putting forward what he was instructed to put forward as a Charges Scheme, that it was incumbent upon him to burn the midnight oil in evolving principles and considering principles, and enunciating a series of principles, for the consideration of the Tribunal. I do submit that it would be wholly without any point or purpose on this occasion to enunciate any principles at all, except that they are short of money; but that is not the enunciation of a principle, but the statement of a need. You say: "I want more money; therefore I manipulate the tables."

(*President*): I suppose you could enunciate the principles which were enunciated on the last occasion.

(*Mr. Lloyd-Jones*): Yes, Sir.

(*President*): You could say: "We have not found any better principles or pattern, or indeed patter"—but it is now half-past one, so perhaps this is a convenient moment to adjourn, and we will return at half-past two.

(*Adjourned for a short time.*)

(*President*): If there are any Objectors here who have not indicated who they are and who represents them, would they please do so now; otherwise their names will not appear on the shorthand note which is being taken and which will eventually be printed.

(*Mr. Lloyd-Jones*): There is very little more I feel I can usefully add, Sir. I would say for your convenience, when you are considering what length of time you propose to sit to-day, that I shall certainly not detain you for more than a few more moments.

I was referring to the enunciating of principles on the last occasion, and my submission was that if they were repeated on this occasion, it would, in my submission, be a pure waste of your time; secondly, I tried to illustrate to you that there is no new kind of principle enunciated in this new Charges Scheme which is now put forward. If anybody in the position of my learned friend were reduced to saying: "I stand by, and I reiterate, the principles which were enunciated at the last Inquiry; I have nothing to add to them, nothing to subtract from them; those are precisely the principles which I am now putting forward", it would be my submission that he would not be dealing in those circumstances with a draft Scheme and that he would in fact be doing what he is doing here, making additional charges, or some form of surcharge to the existing charges, altering the Schedule for the purpose of increasing the revenue; and I have too often submitted to dare to repeat it, that it does not amount in my submission to the formulation of any Scheme, and it does not determine anything within the meaning of the Act. I cannot usefully repeat it; I submit that there is no room here for the evolution of any new principle and, as I have read the literature which is available up to the moment and, no doubt, the impending volume of literature which will follow if this Objection is not sustained, they have not been able to show that there has been any attempt to say that a new principle or any kind of new pattern, or that anything more has been done than the simple process of adding to the fares.

I will not take up the time of the Tribunal further; I know that there are others, representing other interests, who will carry further some of the submissions which I have made, and who may put them more cogently. In any event they may have a number of submissions other than those which I have made. In those circumstances, Sir, I feel that I ought not to take up the time of the Tribunal further, unless there is some question which the Tribunal desires me to deal with in particular.

(*President*): I ask you this, Mr. Lloyd-Jones: In the case of *this* document which has been lodged, suppose you were to divide it into two, the first of the two being a document which did no more than revoke the 1952 Scheme, and the second of the two containing everything which is in this document except the revocation clause, and suppose the revocation document was lodged on a Monday and the second document was lodged on Tuesday, would either of those be for alteration as under Section 79?

(*Mr. Lloyd-Jones*): My submission is that the latter document if you examine it and find it in effect was doing no more than *this* document does, omitting the revocation —would be no more than a proposal for alteration.

(*President*): For altering what?

(*Mr. Lloyd-Jones*): The existing Scheme.

(*President*): Which, by the time they came to be considered, would have been revoked.

(*Mr. Lloyd-Jones*): Then, with respect, what you are putting to me is in this sense not a practical proposition or a practical illustration, because you have to assume for the purposes of discussing this document that it would have values which you could compare with the document of 1952.

(*President*): I do not quite follow that.

(*Mr. Lloyd-Jones*): With the document of February. You would know that you had a scheme in 1952. You would also know that it had been revoked the day before you came along to consider the new document.

(*President*): Let us stop there. I gather you would concede that a document which did no more than revoke the existing 1952 Scheme could not be presented under Section 79.

(*Mr. Lloyd-Jones*): I agree ; it would not be a scheme in my submission.

(*President*): It would not be an alteration.

(*Mr. Lloyd-Jones*): It would not be anything except revocation.

(*President*): And the only power under which such a document could be lodged would be subsection 22 of Section 77.

(*Mr. Lloyd-Jones*): Certainly such a revocation would not be a scheme ; it could not be.

(*President*): That would leave no Charges Scheme in existence.

(*Mr. Lloyd-Jones*): There must be one.

(*President*): No ; there is no law of nature that there must be.

(*Mr. Lloyd-Jones*): There is a duty if not a law of nature.

(*President*): There is no power within Section 79 to revoke the Scheme.

(*Mr. Lloyd-Jones*): No.

(*President*): Therefore, a document which was limited to revoking a scheme, if justifiable at all, would have to be justifiable under Section 77 (2).

(*Mr. Lloyd-Jones*): I do not think it would be justifiable at all, with respect. I can see no ground on which it can be said that a document revoking a scheme is itself a scheme because it is only the getting of something and placing nothing in place of something.

(*President*): Then pure revocation cannot be done by a document which is limited to revocation.

(*Mr. Lloyd-Jones*): That is quite right.

(*President*): Revocation then must be accompanied by something.

(*Mr. Lloyd-Jones*): Yes.

(*President*): And that other something must be a Charges Scheme.

(*Mr. Lloyd-Jones*): Not necessarily.

(*President*): The revocation cannot stand alone. Then by what must it be accompanied?

(*Mr. Lloyd-Jones*): The whole of my document makes it clear. Although it is expressed to be revocation, that is only part and parcel of the same evasion of the provisions in regard to alteration. That is only part of the machinery of the subterfuge. Of course, the revocation is put in in order to give a colourable semblance of a scheme to something that, in effect, is not a scheme.

(*President*): Parliament seems to have contemplated an act properly to be called a revocation, does it not? It gives an express power to revoke.

(*Mr. Lloyd-Jones*): Yes, and I have no doubt with respect, if I may so put it, that there can be and one could conceive of instances where there would be a revocation and there would be the institution of an entirely new scheme. Parliament has also contemplated what is called an amending scheme, which is another form of approach. But in my submission the mere fact you say I am revoking a scheme and bringing in a new one does not absolve you of the need and the duty of inquiring in order to find out whether in reality it is doing anything.

(*President*): How is one to exercise the power of amending a previous Charges Scheme under Section 77 (2)?

(*Mr. Lloyd-Jones*): Quite apart from Section 77 (2) the Tribunal itself will have to consider that under Section 79 and the proviso to Section 79—limb 3 of that proviso. It is for the Tribunal to decide as the occasion may arise whether or not it thinks that an amendment scheme ought to be substituted for an application to alter.

(*President*): Therefore, there are things which we may call changes which can properly be brought about by an amending scheme, and changes which can properly be brought about by an alteration.

(*Mr. Lloyd-Jones*): Yes, that is so.

(*President*): And the distinction—or one distinction—between them is that some things are of such a magnitude that they ought to be done by an amending scheme.

(*Mr. Lloyd-Jones*): Yes.

(*President*): The question whether some changes are of that magnitude is a question to be decided by the opinion of the Tribunal.

(*Mr. Lloyd-Jones*): Yes, subject always, if I may venture to repeat myself, to the fact that the Tribunal does not, in my submission, and cannot address its mind to that problem of magnitude unless and until it has an application for alteration.

(*President*): I am not considering when it has to apply its mind ; I am considering the distinction drawn in the third proviso as a guide to the construction of Section 77 (2).

(*Mr. Lloyd-Jones*): Yes, I appreciate that, and I am sorry that I felt it necessary to reiterate my submission. My submission is, of course, that they cannot, unless they have an application to alter, consider the magnitude.

(*President*): Does it not suggest a distinction so far as the Commission is concerned between important changes and less important changes, namely, that the less important changes shall not be made too early or too often? An application cannot be made for a less important change within 12 months. Does that not suggest that an application for an important change can be made at any time?

(*Mr. Lloyd-Jones*): If it does it seems an extraordinary matter, if only for the great practical inconvenience ; and I do not blush now at mentioning practical considerations or considerations of convenience, because they are not altogether excluded from considerations on these occasions. I do suggest a change of great magnitude, a really important change, in less than a period of 12 months is going to throw all those who have to consider these matters in the greatest possible difficulty in that it is necessary that a certain period of time must elapse before the outcome of certain decisions can possibly be judged.

(*President*): Section 79 contemplates that changes may be of such magnitude that they ought not to be the subject of an application for an alteration.

(*Mr. Lloyd-Jones*): Yes.

(*President*): But they should be the subject of an amending scheme. If you look at the power to propose an amending scheme there is certainly no time limitation.

(*Mr. Lloyd-Jones*): I appreciated that and I faced it earlier. I faced that voluntarily. My submission, however, is that it would indeed be a most extraordinary position to limit the alteration of a lesser character by saying "not until 12 months has elapsed", but you allow an absolutely total change to take place within the period of 12 months.

(*President*): There is no avoiding that, Mr. Lloyd-Jones, is there? It is extraordinary, but Parliament plainly has contemplated the presentation of an amending scheme without any limitation of time.

(*Mr. Lloyd-Jones*): With respect, I do not accept that.

(*President*): Where do you get the limitation of time for an amending scheme.

(*Mr. Lloyd-Jones*): If it is put forward as an alternative to alteration under Section 79, then I submit that the same limitation governs that as governs the making of alterations. In other words, my submission is that looking at the proviso of Section 79 you start and can never depart from your 12 months. You cannot look at it until 12 months have gone by. Therefore, the Tribunal is only competent to say that this cannot be an alteration as an amending scheme if in fact the primary conditions have been satisfied and 12 months have elapsed. Therefore, though not directly, but indirectly, it is there as a limitation under Section 79. The time limit is not departed from for the purpose of the third limb.

(*President*): I would prefer at any rate to have found some words suggesting that in the sub-section which deals with amending schemes.

(*Mr. Lloyd-Jones*): One would prefer to, but in my submission the construction to be applied is that one must look at this particular group or section as a whole, and in order to arrive at a construction in regard to a scheme, one has to bear in mind that it would be the oddest of things if the Legislature allowed major and indeed drastic changes to be effected in a lesser period of time than those which were necessarily smaller and of less consequence.

(*President*): Is there any time limit for the present scheme which revokes the scheme?

(*Mr. Lloyd-Jones*): There is no express time limit as far as I am aware.

(*President*): Would you say that although one cannot apply to revoke under Section 79, the 12 month limitation in Section 79 still applies to a revocation?

(*Mr. Lloyd-Jones*): Yes.

(*President*): You cannot touch a scheme earlier than 12 months?

(*Mr. Lloyd-Jones*): I do not think I would put it like that. What I say is that if it is formulated as an application for alteration under Section 79, you cannot touch it. You cannot touch it until the 12 months have elapsed, and therefore you cannot even make your suggestion that it should be an amending scheme intsead of alteration until the 12 months have elapsed. I concede as far as revocation is concerned that it does appear to be that long. That is why I say the fundamental thing is to see if this is within its nature within the Act a scheme at all.

(*President*): I have the point. It is very like the document which you have conceded is a scheme, is it not? Indeed the whole point of the other preliminary argument is that it is too like the existing scheme.

(*Mr. Lloyd-Jones*): Too like it to be a scheme ; it is the old scheme with alterations.

(*President*): Mr. MacLaren, are you following on Mr. Lloyd-Jones or are you going to speak in your other capacity?

(*Mr. MacLaren*): I am instructed by the East Ham and West Ham County Borough Councils and by the South-West Essex Advisory Committee. I am speaking on behalf of those bodies.

(*President*): I do not think it is necessary to discuss any question of locus on this occasion.

(*Mr. MacLaren*): I appreciate that. If I may start at the point which you have just raised, it seems to me that the fact that there is no time limit in Sections 76 and 77 whereas there is in Section 79 throws a very considerable light on the scheme of the Statute. I feel myself that Parliament, in framing this Act, did not envisage that a Charges Scheme as is intended by the section—that is to say the setting out of the scheme ; the whole pattern of fares and charges—should be subject to rapid alteration. It goes back into the history of the control of railway charges that the Charges Schedule, or Scheme as it is now called, is something that lasts. The design once laid is expected to last for some time before it becomes necessary to make a radical change.

(*President*): How far back in history are you going?

(*Mr. MacLaren*): To 1921. The Charges Schedule under the old Act lasted for years, subject to amendment from time to time. What I am suggesting is that the scheme of the Act is that——

(*President*): There was review.

(*Mr. MacLaren*): There are similar occasions for review.

(*President*): When the Minister orders it.

(*Mr. MacLaren*): Or now at the motion of a party. Instead of having automatic review it is brought into being by the Minister or under Paragraph 4 ; instead of being automatic it is by motion. It seems to me that the scheme here is that the general pattern of charges should be laid down and after that it should be subject only to alteration. The point that the form of revocation here, or revocation and re-enactment, is a pure matter of form has been made sufficiently plainly here, I think, for me not to have to add anything to it. There is no point in revoking a scheme simply to re-enact it again. If the Commission's view here is right, it surely must take them as far as this: if they have revoked the present scheme and propose to re-enact it with a 2d. fare raised to 2½d., that would be a new scheme. That seems to me a quite impossible proposition. For there to be a new scheme something must happen to the general design and relationship of fares and charges one to another. There must be a renewal of the pattern of such a substantial nature as to virtually produce a new design or pattern for the scheme to be even an amending scheme. Parliament has not thought it necessary to put a provision as to time limit in Section 76 and Section 77 for the very good reason that no one in their senses—except under a most unlikely crisis such as war or something of that kind—would propose at this stage a radical reformation of the design of charges which, after very long consideration at two Inquiries, has now been laid down. Everyone expects that that will continue and indeed the Commission themselves in their present proposal propose that it should continue. The Commission are not making any suggestion for any change in the general design and pattern of charges and conditions. It seems to me that the scheme of the Act is plain.

(*President*): Except it has no reference, no words which can be turned even rhetorically into general design and pattern. You say that is the scheme of the Act—a phrase of which I always have the greatest suspicion.

(*Mr. MacLaren*): With very great respect, the word " scheme " itself just means——

(*President*): I thought you were talking about the scheme of the Act.

(*Mr. MacLaren*): I am sorry, I was using the word " scheme " in two connections. Perhaps I can put it this way: by using the word " scheme " and describing it in the way in which it is described in Section 76 and Section 77, it is intended that a scheme should, in fact, fix the general design and pattern for the charges. The very duty which is put upon the Commission in Section 72 to draw a scheme or a series of schemes for the whole of their undertaking has the same suggestion of its all-embracing nature. If I may say so, when you referred to the application in this case, you said that it looked very like a scheme. Its appearance of a scheme springs from the fact that it does cover all the activities on the passenger side of the British Transport Commission. The embracing nature of it is what makes it a scheme. The submission here is that in that sense, in the sense in which it is embracing and fixes a design, it is the same scheme as before ; there is nothing new in it. What, in fact, has happened is that there has been a series of small surcharges on certain fares.

May I put the matter in another way? I do not think if the Commission had made their present proposal as a proposal for alteration anyone would have questioned that it was so substantial as to be one that ought to have been made by an amending scheme. It plainly is not of that kind.

(*President*): It is not a question for anyone else, it is a question for us, is it not? We will have it on the files of the Tribunal ; it is not publishable. We have to consider the alteration proposal before we decide it has to be published.

(*Mr. MacLaren*): Heaven forbid that I should attempt to put myself in your place. I was suggesting that at the Bar no one would have raised the question. If it is to be said that the present proposal falls within Section 76 and Section 79, then there is plain conflict within the Act, and it would seem to me that the proper construction of the Act would be one which would not——

(*President*): Why is there a plain conflict?

(*Mr. MacLaren*): Because under Section 79 there is a very strict limit on time, and I do not think that the time limit can have been imposed upon the Commission by an Act of Parliament not meaning to have some effect. In that sense there is a conflict. Can the Commission be free to choose whether they come under Section 76 or Section 79 for what is substantially the same proposal with just a change in form?

It seems to me that that conflict is entirely resolved by giving to the word "scheme" its natural and ordinary meaning; but to be a scheme at all a proposal must be set up to design the general pattern of the charges. If that meaning is given to the word "scheme" then there is no conflict. Not merely is there no conflict, but there is every reason why Parliament should not have put a time limit in the earlier section because nothing short of a catastrophe would make it occur to anyone to make drastic alterations in the pattern of charges within a period of 12 months. If anyone had attempted it here, I have no doubt that the Tribunal would have had no difficulty in reaching a conclusion. It would be one which would not bear very much consideration unless there had been most exceptional circumstances to force it upon everyone. So if this interpretation of the word "scheme" which I am suggesting is given to it, then the difficulty ceases to exist; the 12 months limitation makes sense, limited as it is to the proposal of an alteration. With very great respect, I suggest that it is by giving this large sense to the word "scheme" as used in the Act that the whole of these sections falls into place and the difficulties and ambiguities disappear.

(*President*): The whole of this argument really comes to this: *This* document, lodged whenever it was at the beginning of January, cannot properly be described as a Charges Scheme within the meaning of Section 76 and Section 79. Is that right?

(*Mr. MacLaren*): That is right. The document, that is the whole proposal—

(*President*): The bundled pages.

(*Mr. MacLaren*): It is possible to dress your proposal in a certain form. If you put two printed documents together they may look alike, but the substance of the proposal is the change it proposes to make, surely. The fact that the printed documents look alike does not mean that the new proposal is the same as the existing scheme. The form of revocation and re-enactment is only a matter of form, and what I am suggesting is that what has been achieved by this form could equally have been achieved under Section 79. Therefore, I am saying that the proposal before the Tribunal does not propose to change the existing scheme, but simply to make some minor alterations. That being so, it falls to be dealt with under Section 79.

(*President*): Does it amend the existing scheme?

(*Mr. MacLaren*): Certainly. Every alteration must amend it. But the question is whether the amendment is of such magnitude. May I say one word on the question of magnitude? I should ask the Tribunal to construe the word "magnitude" with reference to the use of the word "scheme" in the Act. "Magnitude" obviously might refer simply to the money involved. I will take a simple example. I have suggested once already that a ½d. surcharge on a 2d. fare in the London Area would produce a revenue of £4,000,000.

(*President*): Now you are giving evidence.

(*Mr. MacLaren*): I imagine it would. We have been told that the amount is £13,000,000. Such a sum is quite a large sum. I do not think it could be said that the amendment of the Scheme by changing the 2d. fare to 2½d. is an amendment of such magnitude that it ought to be done by a fresh Scheme. The test of magnitude is not the test of the sum of money to be raised.

(*President*): That is a matter of degree. If it is proposed to multiply all fares by four, I rather doubt whether you would leave this building alive if you said that was a comparatively minor matter!

(*Mr. MacLaren*): I imagine such an alteration would indeed call for a new Scheme, but not so much because of the money involved as the dangerous results it would have on the Scheme itself. What I am suggesting is that the test of magnitude is in reference to the design or pattern of the charges, and if it does not make a substantial change in that, then it is not a proposal of such magnitude as should require a new Scheme. But, very briefly, I seek to put a similar construction on the word "magnitude" as on the word "Scheme" and relate one to the other.

In this case the sum sought to be raised—some £6,000,000—is not the test, but the effect of the proposals on the scheme and pattern of fares and charges. I do suggest that it does bring harmony to the Act if it is considered in that way.

I do not think there is anything further I can add, unless there is anything in particular on which the Tribunal wishes to hear me.

(*President*): If this is a Charges Scheme it does amend the previous Scheme and is within Section 77 (2)?

(*Mr. MacLaren*): No. What I am seeking to say is that this proposal in form is a Scheme; I say that at once. In substance it effects what I say amounts to an alteration.

(*President*): That may be so, but just forget for the moment whether it effects an alteration, because of course it does in one sense. Is it also a proposal which, if confirmed, will amend the previous Scheme?

(*Mr. MacLaren*): Using the word in its widest sense, certainly.

(*President*): Using the words in the sense of Section 77 (2)?

(*Mr. MacLaren*): No, I suggest an amending Scheme must be of such substance as not to be receivable under Section 79. What I am suggesting is that they are mutually inconsistent.

(*President*): Exclusive of one another?

(*Mr. MacLaren*): Exclusive, yes. If a proposal could be brought under Section 79, then it cannot be brought under either Section 76 or Section 77. This particular Schemes does purport to revoke, but I think that that makes the position all the more plain because the revocation is plainly a question of form, not of substance.

(*President*): Of course an amendment can be so drastic that you do not need to revoke a thing; you take all the clauses you want to change radically, you just insert the word "not" in some places, and in the end you have a highly convenient way of revoking the previous Scheme and substituting a new one.

(*Mr. MacLaren*): Certainly, and the convenient method then is revocation. I do think whether or not a Scheme sets out to revoke is a question of convenience under Section 76 or Section 77. If the substance of the proposal may equally be made under Section 79, then I say it should not be made and cannot be made under Section 76 and Section 77. I suggest that is the only way of interpreting the Act which leads to harmony and not to conflict. On the facts here I do not think there can be any serious doubt that the substance of the proposal could equally well have been made under Section 79, and on that ground it ought not to have been made under Section 76.

(*Mr. Turner-Samuels*): I represent the London Trades Council.

(*President*): That is the old body?

(*Mr. Turner-Samuels*): The only one.

(*President*): The other has a new name, has it? Was it done under a power to alter or a power to amend?

(*Mr. Turner-Samuels*): I would rather not be drawn into answering that question, Sir, at this stage.

What I have to say is supplementary to what my learned friends have said, and I adopt their arguments; I am not seeking to attack their arguments. As you observed, what has to be considered today is the question of principle, to determine what is the correct principle in connection with the matter being discussed, and then to apply that principle to the Application put forward by the British Transport Commission.

The principle which we are discussing, put in concrete terms, is this: Can the Transport Tribunal—yourselves—confirm the present Application and 24 hours later can the British Transport Commission ask for the 2d. fare to be converted to 3d., thereby raising £6,000,000? Can they succeed in that by putting forward the Application in the form of a revocation of the existing Scheme and

the substitution of an entirely new Scheme? If the present Application is a proper one, that is what this Tribunal will also be finding is perfectly proper and within the Act.

I would say that one has first of all to consider what is an alteration. Nobody will quarrel with the proposition that if what has been put forward by the British Transport Commission is an alteration, then this Tribunal has no jurisdiction. In my submission an alteration can be either what one might call a pure amendment, or it can be in the form of a new Scheme.

The Section of the Act relating to Charges Schemes is set out—Section 76, using the marginal notes, which of course are not binding upon you but which I think you will find accurately describe the contents of the Section—and relates, as I have said, to Charges Schemes and what they are, and Section 77 sets out all the contents of a Charges Scheme. In subsection (2) it says: "A charges scheme may revoke or amend any previous charges scheme". Section 78 goes on as to the question of confirmation of a Charges Scheme. Then we come to Section 79 relating to the alteration of Charges Schemes, not their amendment; not their amendment but their alteration, and alteration is not the same word as amendment.

You have to consider what "alteration" means. Does "an alteration" mean more than "amendment"? Does it mean "an amendment"? It certainly cannot mean less than an amendment because you cannot alter the Scheme other than by completely changing it or amending it. Therefore the first question is not to oppose amendment and alteration or to oppose a new Scheme and alteration, but to look at alteration and to see if that includes both amendment and all new Schemes, or only certain categories of new Schemes.

Before I consider that question, I make my new proposition, and that is whether a new Scheme or a new Application, to use a negative term, is an alteration or not, and is a question of substance and not of form. That is a proposition which I think would be acceptable to all Common Lawyers and is one with which we are familiar.

Perhaps I may give you two examples. A document may, on the face of it, purport to be either a tenancy or a licence. It may start off by saying: "This tenancy so and so" or "this licence so and so", but it has been held by the Courts that one must look not at the form and what the parties themselves call it, but at the content, the substance of the document. There is a recent Court of Appeal authority on that, as recent as 1952, and I would refer to *Facchini* v. *Bryson* reported in Volume 68 of the Times Law Reports at page 1,386. Lord Justice Denning makes it quite clear that it is not for the parties to decide what the thing is merely by giving it a label. On page 1,389 he says: "In such circumstances it would be obviously unjust to saddle the owner with a tenancy, with all the momentous consequences that that entails nowadays, when there was no intention to create a tenancy at all. In the present case, however, there are no special circumstances. It is a simple case where the employer let a man into occupation of a house in consequence of his employment at a weekly sum payable by him. The occupation has all the features of a service tenancy, and the parties cannot by the mere words of their contract turn it into something else. Their relationship is determined by the law and not by the label which they choose to put on it".

There is a similar principle applicable in the law of agency and reported in the same volume at page 792, the case of the *Customs and Excise* v. *Pools Finance Limited*. The Pools people were putting something forward: "They cannot truthfully say that the collector 'acts solely for the investor' when they themselves appoint him and pay him. The clause contradicts the facts and is, to that extent, invalid". Then the Lord Chief Justice goes on, at page 797: "This is no new doctrine. In life actions speak louder than words. So they do in law". In my submission the issue that you have to decide today is one of substance and not one of form.

The next proposition I have to make is that subject to Section 125, subsection (1), to which I do not think your attention has been drawn, "alteration" is to have its ordinary plain meaning. Section 125, subsection (1) defines.

(*President*): That includes addition.

(*Mr. Turner-Samuels*): It includes addition, but subject to that and bearing in mind that alteration shall include addition, alteration is to have its ordinary plain meaning. That is a well-known principle for which I need hardly quote authority. However, I would just like to read a passage of Lord Justice James in the Court of Appeal reported in the case of *The Cargo ex Schiller* in 2 Probate Division, page 145, at page 161. This was actually a case to do with cargoes and was based upon the interpretation of a Statute. I think I can just cite this dicta. "I base my decision on the words of the statute as they would be understood by plain men who know nothing of the technical rule of the Court of Admiralty, or of flotsam, lagan, and jetsam." I do not know whether this Scheme is flotsam or jetsam, but I hope after today's Hearing it will be one or the other. "The legislature tells mariners that if they exert themselves to save life, they shall receive reward on the principle of salvage, and to put a technical meaning on the words, so as to limit the operation of the enactment, would be 'to keep the word of promise to the ear and break it to the hope'." That, Sir, is what the British Transport Commission are trying to do. The Act makes the promise to the ear. Have the British Transport Commission succeeded in breaking it to the hope?

(*President*): What is the plain, ordinary meaning of the word "amend"?

(*Mr. Turner-Samuels*): With respect, I would rather not answer that question but deal with what is the meaning of "alteration".

(*President*): Very well.

(*Mr. Turner-Samuels*): That is the next matter I come to consider. The ordinary plain meaning of "alteration" is to effect a change.

(*President*): That is the meaning of the word "alter" is it not?

(*Mr. Turner-Samuels*): Yes, it is the noun. For example, one can alter the rate of income tax, and if the income tax is changed from 9s. 0d. in the £ to 10s. 0d. in the £ or to 8s. 0d. in the £, that is an alteration in the rate of income tax and of course it is effected by a new Statute, a new Finance Act. Nevertheless it is an alteration in the rate of income tax.

The British Transport Commission could alter the route of their trains to Scotland; they could change it from one route to another, and they could substitute an entirely new route. That would be altering the route of their trains to Scotland—I do not need to go into the question of the exact limit of alteration and where it should be, because the question before this Tribunal is whether the present Application is an alteration or not.

I would submit that where the substantive effect of an Application is to alter the rates without touching upon any principle upon which a Scheme is founded, that amounts to an alteration whether it is a new Scheme or an amendment. What then is the effect of the existing Scheme? You may have observed in your daily travels that on the underground trains and in the underground, and may be on the buses, the British Transport Commission themselves have put up a notice saying that all they intend to do is to alter the fares.

I would like to refer you to the document to which my learned friend has referred, which was lodged by the Applicants—BTC 5. I do not want to go into the merits of the thing, but to look at the principles which the British Transport Commission themselves are setting out as being the principles applicable to this present Application. My learned friend referred you to paragraph 13 on page 7, so I will leave that out and go on to paragraph 14. This is the British Transport Commission's own case. The first sentence in that paragraph says: "In particular the Draft Scheme has been so framed as to preserve the principle of assimilation of the standard scale of charges on all forms of transport in the London Area". They are preserving the principles of assimilation. That is the second point; the first has been dealt with. Thirdly, the last sentence in the same paragraph says: "In framing the present proposals, the Commission have taken care to ensure that the advantages of assimilation of London Area charges already secured shall be retained". No change there.

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You made reference to the question of substandard charges, and that is dealt with in the next paragraph. They propose again to carry into effect what is the present position of not increasing substandard charges by larger amounts than those by which the equivalent standard charge is increased. So there again there is no change over the present position.

Then on page 10, paragraph 17 deals with the area to which the Draft Scheme applies. "Part III of the Draft Scheme applies to the same area and the same services as the 1950 Scheme and Part III of the 1952 Scheme", except for a small area where there has been a delegation of functions. So it is the same area.

On page 15, paragraph 26, the last two lines under the heading "Day return fares on Railway Executive London Lines", they say: ". . . thus preserving equality of charge for day return journeys on both systems". The same principle.

At the foot of page 15, in paragraph 29 it says: "It will be seen that no change is proposed in the system first introduced by the 1950 Scheme and preserved in the 1952 Scheme, whereby early morning fares on road services take the form of a cheap single fare available for distances up to 10 miles" and so on. There is no change in principle there.

On the next page, in paragraph 30, the last sentence on the page says: "It remains the view of the Commission, as expressed in connection with the two previous Schemes, that there is no adequate and permanent justification for early morning fares at a lower level than the standard fares for corresponding journeys made at other hours". They still have not changed their mind that early morning fares must be disposed of as soon as they can.

Paragraph 31, on the next page, says: "The Draft Scheme contains no proposals for varying the definition of early morning fares set out in the 1952 Scheme or the conditions relating to their issue".

At the foot of page 17, the last sentence of that page, paragraph 33 says: "The proposed increases of the monthly season ticket rates have been designed to preserve approximately the same percentage difference between the proposed rates and the proposed ordinary fares as there is to-day between the existing rates and the existing ordinary fares, without disturbing the smooth progression of the scale". Those are the same principles as before. The last sentence of that particular paragraph reads: "It will be seen by comparing Columns 12 to 15 with Columns 5 to 8 on this Exhibit that the proposals substantially preserve the existing discounts or savings afforded by the season ticket scales compared with the cost of travel at separate fares". Precisely the same principles again.

Paragraph 34 says: "The existing formula for calculating the three-monthly and weekly season ticket scales from the monthly scale is not altered".

The next paragraph says: "The provisions with regard to first class season ticket rates and to season ticket rates for juveniles do not involve any departure from existing practice".

Paragraph 38, in the second sentence, says: "It is the intention that weekly Coach tickets shall continue to be sold at rates having the same relationship to the ordinary single fares as at present". That, being the end of the relevant part of the document, is the end of the similarity.

Another exhibit put in by the Applicants, Exhibit 510, shows that they are applying the same principles of asking for a greater increase by workmen travelling on early morning fares than by the other public. The last column of Exhibit 510 says: "A 6.5 per cent. increase in yield from the ordinary passenger, and a 12.4 per cent. increase from the workmen passengers on the early morning fares". Again there is no change there.

Having looked at the substance of the matter, the position is that the only material alterations relate to fare scales. There are of course other slight alterations, and an examination of the present Application and of previous Applications can enable anyone to find certain changes, but these are not matters of substance at all.

The first paragraph of the present Draft Scheme says: "The Scheme may be cited as the British Transport Commission (Passenger) Charges Scheme, 1953". The last Application went on, after setting out the title, "and shall come into force on the day of , 1951".

(*President*): Where are you reading from?

(*Mr. Turner-Samuels*): The Draft Scheme, Sir.

(*President*): The Draft has long since passed out of my mind, I am afraid.

(*Mr. Turner-Samuels*): If you looked at it, Sir, you would see that the present Application is on all fours, apart from the fare rates, with the old one. They are doing the same thing precisely over again, except that their figures are different. Of course, as you observe, the general public will complain if fares go up; they will complain if there is an alteration in fares. Their complaint, however, does not make the alteration any less an alteration; you might feel that it might be more of an alteration rather than less.

Looking at the present Application, it is necessary to return to where I started. The yield of this Scheme is to be about £6,000,000 I think I am right in saying; the precise figure does not matter. It can be observed from the schedules already lodged by the Commission that a smaller amount—again the precise figures do not matter—would be received by raising the 2d. fare to 2½d. Therefore one is forced back to the question: If the present Application is confirmed, the very next day can the British Transport Commission apply to increase the 2d. fare to 3d., and succeed in that manifest evasion of the Act merely because they put the matter forward in the form of a revocation of the then existing Scheme and a substitution of the new Scheme? I have argued the thing round to its beginning again, and I think it shows how the matter ties up.

May I finally look at the relevant Sections of the Act? Schemes can only be changed by revocation or by Amendment. If there is going to be a change, it is either to be a revocation of a Scheme and the substitution of a new one, or it has to be by amendment; there is no other way of doing it. If the change is an alteration, may be revocation of an entirely new Scheme would be an alteration based on new principles, may be that would be an alteration. However, we do not have to go to that length.

If the new Scheme, whether by revocation or by amendment, is in substance an alteration of the existing Scheme and not a departure, a total departure in principle, then it must come within the terms of Section 79 (1).

Section 79 does not refer merely to a minor alteration such as the increase of a 2d. fare to 2½d.; it relates to charges in the plural, and that is made clear by Section 79, subsection (3). It provides that "Any body representative of any class of persons providing for hire or reward services or facilities similar to or comparable with the services or facilities to which the scheme relates who desire to contend that the alteration sought for in the application would cause the charges"—plural—"made under the Scheme to be unduly low may lodge a representation to that effect with the tribunal". So the very Section of the Act itself makes it clear that Section 79 is designed and does refer expressly to a change in charges. There is no change in principle at all upon the case the British Transport Commission themselves lodged with your Tribunal, and in those circumstances whatever may be the limits of the meaning of the word "alteration", this new Scheme would be called by any man in the street whose shoulder you tapped, an alteration. It is obvious from the posters in the underground trains put up by the British Transport Commission itself that the Scheme is an alteration in fares; and in substance, applying the terms of the Act, a proper construction, I say, is that this Scheme is an alteration within the terms of Section 79 and that you have no jurisdiction.

(*Mr. Osmond Turner*): I represent the London Passengers' Association. May it please you, Sir, may it please the Tribunal; my learned friends have gone over the ground very thoroughly and I do not want to waste a lot of time this afternoon. It seems to me that the whole question for determination by the Tribunal this afternoon is what interpretation one gives to three words. The first word is "Scheme", the second is "alteration" and the third is "amendment".

What is meant in this Act by a Scheme? In my submission it means exactly and precisely what it says. A Scheme is a series of propositions which are put together in some

kind of design or some kind of order. An alteration means just that you are not interfering in any sense with the design, with the Scheme itself, but you are merely altering details of the scheme, the rate of charges, the way in which they are to be charged, something small, something which might be called almost administrative detail.

My next submission is that if you are going to go further than that and you are going to alter the whole scheme or design of things—I had better say "design of things"—then you are producing what in effect is a new scheme. When you change the design of a scheme, then you are amending it. When you are changing the mere administrative detail of it, then you are altering it.

(*President*): You are saying that a power to amend does not include power to alter, are you? It extends to a different matter?

(*Mr. Osmond Turner*): Clearly if you amend, that is to say if you alter your scheme in such a way that it becomes virtually a new scheme in the ordinary sense of the word, you have altered it, but in the sense of the Act you have amended it. That is the clear distinction between the ordinary use of the word "alter" and the meaning which is given to it in the Act, and the same applies to "amend".

(*President*): Let me ask you again: You say that the power to amend does not enable you to do something which the power to alter does enable you to do?

(*Mr. Osmond Turner*): No, I do not say that at all.

(*President*): Then do you say that the power to amend includes the power to alter?

(*Mr. Osmond Turner*): I say they are two entirely separate and distinct things; that is to say that in producing a new scheme you could not propose to alter it and to amend it, because amendment goes to the design of the scheme, whereas alteration goes only to the detail of the scheme.

So far this afternoon it has not been very clear to me exactly what a scheme, as amended, would in fact be. In my submission it would be such a vital alteration to an existing scheme as to alter the whole sub stratum of it. If I may be permitted to give an illustration, last year before the Tribunal it was suggested by my Clients that there might be an amendment to the existing scheme which was put forward by the British Transport Commission, and that it might be in this form: That the basis of fare charges in London to be clearly divided into two classes, that is (*a*) as affecting persons compelled to travel to and from their place of work every day, and (*b*) all other travellers. Then it went forward and described a way in which such a scheme might be arranged. In my submission that would be an amendment of a scheme because you are going to the whole basis, the whole sub stratum of the scheme—the design of it—and changing it and altering it almost into the semblance of a new scheme.

(*President*): Have you looked for any authority to the effect that the word "amendment" is to be construed in that sense?

(*Mr. Osmond Turner*): I can give you no authority, Sir, but as I see it, it goes to the very word "scheme" itself.

(*President*): "Amendment" by itself includes any kind of change? You would concede that?

(*Mr. Osmond Turner*): I would say that within this Act——

(*President*): Do not bother about this Act for the moment; I am talking about the meaning in the general sense. The word "amendment" is used to describe any kind of change whether it is in a Pleading or a Bill.

(*Mr. Osmond Turner*): In the ordinary parlance, yes. I would concede that it meant any kind of change in ordinary parlance.

(*President*): I have never quite understood whether it is meant to be a change which is supposed to be a change for the better, which is the ordinary meaning of the word "amendment"; but in the legal sense "amendment" means any kind of change. But as you say, it is only because of the context of this Act that you have to give it some different and more restricted meaning. You are saying, are you not, that "amendment" here means amendment of the general pattern? Is that not it?

(*Mr. Osmond Turner*): The basic structure of the Scheme itself.

(*President*): Unless the change makes a difference to the general pattern, or if you like, basic structure, it is not an amendment?

(*Mr. Osmond Turner*): That is what I am saying.

(*President*): Or rather, it is an alteration?

(*Mr. Osmond Turner*): It includes alteration.

(*President*): There is no neutral territory between the two where amendments end and alterations begin?

(*Mr. Osmond Turner*): There is no neutral territory, because in one case you are altering the structure, and in the other case you are altering the detail and the structure remains.

(*President*): Suppose you want to do two things at one time, you must do it by way of amendment?

(*Mr. Osmond Turner*): You must do it by way of amendment, yes. There is one matter which springs immediately to my mind in this connection, and it is a matter with which one of my learned friends has already dealt. The British Transport Commission are the only people who have power under the Act to put forward or originate a scheme. An Objector—that is, an Objector as defined in the Act—has certain powers, but they are powers of putting forward alterations. It seems to me to be a very important power indeed, a power granted by Statute. I am reinforced in that view because in looking at the proceedings of the Tribunal of the 17th July, 1951, when the last Scheme was considered, I see that my learned friend Sir Malcolm Trustram Eve was very concerned indeed as to those people who were granted by the Tribunal the right to appear in front of it.

Sir Malcolm said, if I may quote from page 5: "For the benefit of those who have not had an opportunity of studying this Act, Section 79 provides that when a Charges Scheme has been made there is provision for applying to this Court to alter it subsequently in detail. I say 'in detail' because there is an express provision that if the alteration is of sufficient magnitude it has to be done under the next section", which is Section 80. He goes on later to say: "If, therefore, the Commission concedes that any one of these 203 bodies here today are within the words of (*a*), they are conceding for ever that they have a right to apply". He goes on further to say that the Tribunal is conceding that they have a right to come forward and suggest alterations to existing Schemes.

As my learned friend has already said, if the British Transport Commission is in a position to come forward with a Scheme which in effect is merely altering, that is to say, is not going to the structure of a Scheme, then they come forward within the year and the Objector is deprived therefore of his right under the Statute to bring forward an alteration to a Scheme. As you have already said, it may well be that that is no great inconvenience to the Objector concerned. It may very well be that that is so, but nevertheless here is a statutory right granted by Parliament to certain people and to certain bodies, and if this Scheme is construed in the way in which the British Transport Commission asked that it should be construed, then that right is gone and the concern which was felt by the British Transport Commission last time need no longer be with them.

I do not think I want to dwell very much longer on this, but the British Transport Commission are putting forward before this Tribunal a Scheme which, in point of fact, is an amending Scheme, and it would have to be, in effect, a new Scheme to be able to be presented within 12 months. Of course it cannot become a new Scheme merely by calling it such, and that is a point which has been made several times already this afternoon.

In that connection I recall to mind an occasion when I appeared before this Tribunal once before, and before you, Sir, on the 17th July, 1951. I was in certain difficulties because I was appearing for an Association known as the Light Railway Transport League. When I was arguing the case you said to me—at page 21—"But, you know, a body cannot make itself representative of or representing the travelling public generally by putting a few words into its membership form or its articles, or whatever it may be". And later you said: "Of course, it might have called itself Section 78 (2) of the Transport Act, 1947, Association, might it not"? I replied: "It might indeed". You then said: "It would not have carried the matter

any further". I only quote that because it points out quite clearly what has been said many times in this Tribunal, that by merely altering the form of a written document, you do not alter the substance. What is good —if I may put it this way—for the private goose, is good too, I hope, for the nationalised gander.

The only other point which I wish to raise is the question of Section 85, and that I think has not been raised before this afternoon. Section 85 is an over-riding Section; perhaps I may just remind the Tribunal of the wording. It says: "Neither the Commission nor the Transport Tribunal shall do anything in the exercise of their respective powers as respects charges and the submission, confirmation and alteration of charges schemes which in their opinion will prevent the Commission from discharging the Commission's general duty to secure that their revenue is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue taking one year with another"—and then this is the point I wish to raise—"or which in their opinion will prevent the Commission from giving effect to any direction of the Minister under any provision of this Act".

I raise this matter with a certain diffidence, but I would next refer to the Application itself. I think it right to bring this to the attention of the Tribunal, although I cannot argue the matter in its entirety. Going to paragraph 4 of the Application, sub-paragraph (2), one sees: "As a result of an arrangement made with the Minister of Transport following a Direction given to the Applicants by the Minister on the 15th day of April, 1952, certain of the charges comprised in the 1952 Scheme have never been raised to the maxima authorised by that Scheme".

I make my position perfectly clear: I do not at the moment know exactly what were the terms of that direction, and I merely point out to the Tribunal that it may well be that there is in that direction a conflict and that the Commission, in attempting something, is asking the Tribunal to do something which might prevent the Commission from doing something to give effect to the direction of the Minister. I do not know, but no doubt my learned friend for the Commission will deal with it later.

I do not think there is anything more that I can usefully add. All the ground has been covered and more than covered this afternoon. I would merely ask the Tribunal to find in this sense that this is not in fact a new scheme or anything of the kind, but is merely a series of alterations of an existing scheme, and that being so, under your power of Rule 28, you will say that this substantially disposes of the whole matter.

(*President*): Is Mr. Fitzpatrick here?

(*Mr. Fitzpatrick*): I represent the Middlesex County Council, but I do not wish to say anything on their behalf this afternoon

(*President*): Is there any other solicitor representing any other Objector? Is there any other Objector who wishes to address the Tribunal.

(*Mr. Luxton*): I represent the Association of British Chambers of Commerce. We view this rather differently; there is a different emphasis in that in presenting our Notice of Objection we regarded the presentation of an entirely new Scheme, less than 12 months after the coming into force of the 1952 Passenger Charges Scheme, from a different point of view. In view of that Scheme the alterations, which are properly the subject of an application to alter under Section 79, violate the spirit and intent of the Act, and it is an attempt to circumvent the safeguard provided by that Act for users of the said Commission's services.

If I may, I would like to go over our view of the safeguards which are provided in Section 79 of the Act. It is our view that Section 79 and the 12-month period was provided for a particular purpose, and that purpose in our view is that Charges Schemes should first be given a fair trial; second, that the users of transport and the Commission itself are not to be troubled within a period of 12 months with what are called "minor alterations".

I have been here during the course of this Hearing, and it is clear to me that the use of the word "alter" in Section 79 and the use of the term "amend" in Section 77 is causing a certain amount of trouble in that in ordinary parlance "amend" and "alter" mean the same thing. It is our view that where you have words which normally mean the same thing being used in two following Sections of a Statute, they must then mean rather different things, and it is our view that "amend" means such an alteration as is of sufficient magnitude as to call for a new Scheme. If it meant "alter", I think Section 77 might quite well have said it.

A Charges Scheme may revoke or alter any previous charges, but it does not say that it says "amend"; so we maintain that "amend" must mean something rather different from the ordinary meaning of the word "alter", or the word "alter" as defined in Section 125. We maintain that the word "amend" means an alteration of sufficient magnitude as to call for the presentation of a new Charges Scheme.

When we come to the present alteration made by this Application, we feel that the alterations are such as to call for Section 79 procedure rather than the presentation of a new Scheme. As learned Counsel have already said, we feel that this is just a subterfuge to overcome the 12-month period. None of these alterations to our way of thinking is of sufficient magnitude to call for the presentation of a new Scheme. That is largely our case. It is a means of circumventing the safeguards provided in the Act for users of transport that they shall not be troubled within a certain period by minor alterations.

(*President*): By "circumventing" you are imputing to the Commission some moral blame; you are begging the question. The whole question here is whether there are two powers in the Act, one under Section 77 (2) and one under Section 79 (1). If there are two powers and the Commission like to choose one which they find convenient to themselves, they are not circumventing anything; they are taking advantage of that which Parliament says they might do. If there are not two powers, they can only exercise one of them. You cannot circumvent one of them.

(*Mr. Luxton*): I was expressing myself badly. The Act provides for a means of altering the Charges Scheme. Under Section 76 and Section 77 it is provided that a new Scheme may be introduced to revoke, or else you may have an amending Scheme in which the current Scheme and the amending Scheme run together. Then you have Section 79, which is the alteration Scheme. You also have power under Section 80 on reference by the Minister for the Tribunal to alter or make modifications to the Charges Scheme. Those are the four means under the Act for amending or altering a Charges Scheme.

We, as an Association, feel that the proper method of altering the Charges Scheme in the circumstances applying in this case is under Section 79, and we feel that it is not by the presentation of a new Scheme. We feel that we are not alone in that, because the Minister himself at one time apparently anticipated action under Section 79 rather than the presentation of a new Scheme.

There is one other point. I think Section 79 is mandatory in that "the Commission shall from time to time", whereas the other Sections are permissive. The Scheme, or rather the pattern of Section 76, rather suggests that it was the intention of Parliament that the Commission should, over a period, present one Scheme or a series of Schemes to cover the Commission's services under Section 2 (1) (*a*) to (*c*). We know that in the events which have happened, the Minister has relieved the Commission from presenting a Scheme as regards freight charges, but the Section clearly is mandatory; and in a way with that intent to present either one Scheme or a series of Schemes to cover the whole of those services.

Now Section 76 and Section 77 do not in any way suggest that the Charges Scheme may replace another Charges Scheme; it may revoke or amend. We feel that this Scheme is merely a replacement of the current Scheme; the alterations are not sufficiently large to call for a new Scheme.

That is all I have to say.

(*Mr. Willis*): In my submission this is really a very simple question. As you put it yourself a few moments ago, the only question which arises today is: Does the Transport Act of 1947 provide for changes in schemes and—I use a neutral phrase—does it provide two alternative procedures which are capable of being adopted at

the wish or discretion of the Commission, or does the Act say that in certain circumstances you must adopt one procedure and in other circumstances you must adopt the other?

In my submission it is perfectly plain when one looks at the Act that these two procedures are not mutually exclusive; they look at the matter from rather a different point of view. The procedure under Section 79—if I may look at that first—is a procedure intended to provide a rather simpler procedure than the procedure for a charges scheme, a procedure under which there is no scheme prepared at all. All that happens under Section 79 is that an application is made to the Tribunal for an alteration and if that is accepted an Order of the Tribunal is made. That is an Order, but no further scheme is involved. There is this further feature of that procedure: The Inquiry which takes place, and the opposition that is to be encountered, depends on the alteration only. The whole scheme is not subjected to criticism and investigation; that is limited to the alteration suggested.

One can well imagine circumstances in which it would be very much to the advantage of the Commission to adopt that procedure. For example, one can imagine cases where it was desired to alter slightly an area by a scheme. There might be cases under a freight scheme—and of course it is important to bear in mind that this covers not only passenger schemes but freight as well—to modify some classification, and it would not be desired in those circumstances, of course, that the whole of the freight scheme should be thrown into the melting pot. Parliament in its wisdom did provide that method of effecting certain changes.

I do not propose to attempt to say what is necessary within the ambit of Section 79 and what is necessary outside the ambit of Section 79; that must depend in my submission on the circumstances of the particular case. I think it would be unwise of me to attempt to say what is within and what is without. Certainly in the present case the Transport Commission could not have put forward an application under Section 79 to raise something over £6 million without at least feeling a sense of apprehension both that the Tribunal would take the point about magnitude and that the London County Council would press them to take that point. I am not going to pursue further the precise limits of Section 79, but Parliament clearly intended some sort of procedure to effect the minor changes.

May I say this: There is no sort of justification for the argument that Section 79 deals with, and is intended to deal with, quantum and not pattern. You may have a minor change of pattern as well as a minor change in quantum, and to suggest—as was suggested over and over again—if you do not want to change the pattern that Section 79 is therefore the right section has no sort of foundation in the sections at all. Of course, it is significant that Section 79 itself refers to the case where you may have to adopt the alternative procedure, and the alternative procedure is of course the procedure for a charges scheme under Section 76 and the following two sections.

In my submission the really significant point in regard to this matter has not been mentioned yet. The Commission is under a statutory duty under Section 3 (4) and under Section 85 to take the necessary steps to ensure that it has the revenue required to meet what is stated in those sections. I will just read subsection (4) of Section 3, because it has not been read so far, "All the business carried on by the Commission, whether or not arising from undertakings or parts of undertakings vested in them by or under any provision of this Act, shall form one undertaking, and the Commission shall so conduct that undertaking and, subject to the provisions of this Act, levy such fares, rates, tolls, dues and other charges, as to secure that the revenue of the Commission is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue taking one year with another." And the same provision is found in Section 85, which has already been read.

In my submission the position is perfectly clear that the Commission is under a statutory duty to submit charges schemes from time to time, first of course to discharge the initial obligation put on them, and thereafter to initiate such schemes for the purpose of securing that the revenues are adequate for the purposes set out in the Section.

Of course it is for that very decisive reason that in Section 76 there is no limit put on the matter, because of course if you are under a statutory obligation to see that adequate revenues are available Parliament would have stultified that if it provided that a certain time limit had to elapse. By contrast, in the case of Section 79 Parliament no doubt quite reasonably took this view: The comparatively minor alteration or changes we envisage for Section 79 procedure can wait a year without doing any harm to anybody, and it is unreasonable that those sort of changes should be initiated within the 12 months. That is a very sensible scheme in my submission, and very right and proper. It is for that very clear reason that Parliament has not in any way fettered the duty on the Commission under Section 76.

Those are the two procedures and in my submission the Commission has a complete discretion as to which procedure it will choose to adopt. I do not propose in any way to seek to follow the challenge which has been thrown out—I venture to submit quite improperly—in the words "subterfuge", "manipulation" and so on, which all my friends have used from time to time. I do not propose to follow that. All I do wish to say is that there are very compelling reasons why this application has been brought forward, which will of course be elaborated in much greater detail hereafter. But I would, I think, just like to say that perhaps it is not generally appreciated that at the scale of charges at present in operation something over £100,000 a week is being lost, so that time is of the essence of the matter so far as the Commission is concerned.

If I am right that the Act provides a complete discretion to the Commission, then that really is an end to the whole matter because there is the discretion. The Commission have exercised their discretion in a certain way; they have submitted to the Tribunal a document which is on the face of it clearly an application for a new charges scheme, and that being so under the Sections of the Act which have already been referred to we are required to publish this document and we of course have published it in a manner you directed, and thereafter you are directed to hold an Inquiry and thereafter to give your decision on the Scheme. Therefore, if I am right that these are two perfectly optional alternatives open to us, then the Tribunal is under a Statutory duty under those Sections to entertain the Scheme, hold a local inquiry into it and then give a decision in regard to it.

My learned friend's argument seemed really to come to nothing more than this: Here is something which we agree on the face of it is a Draft Scheme; we are driven to say that because one of the main planks in our argument is that it is so very like the one that was confirmed last year, and if it is so very like it then you are driven to admitting that it is on the face of it at any rate a perfectly good draft scheme.

What is said is that this is something which the Commission cannot entertain because although on the face of it it is a Draft Scheme, it is really something entirely different. It can only be something entirely different if in the circumstances that have arisen in this case we are required by the terms of the Act to do something different from what we have in fact done. And my learned friends have referred to no section of the Act which anywhere supports what they have claimed in this matter. The sections of the Act are in my submission perfectly plain. The section could have been provided had Parliament been so minded that if certain circumstances did apply then you were compellable to go under Section 79 and not under some other section of the Act. But my learned friend's argument wholly breaks down because he is quite unable to refer to any Section of the Act which in any way supports his argument. He then goes on to refer to the fact that the pattern is not changed, and I think I have already dealt with that part.

Then my learned friend referred to the sense of frustration which the London County Council would feel if Section 79 was to be construed in this way, because what my friend says is that if this is right whenever I make my application under Section 79 for an alteration you can come along and prevent the Tribunal hearing that application by submitting a charges scheme. Now that, of course, is quite wrong, because if my learned friend's application under Section 79 is submitted, it is a matter which the Tribunal will consider. They will consider it no doubt at the same time if it is a charges scheme.

My learned friend says that he is much better off if he is initiating a scheme, an alteration. I should have thought, with great respect, that it was just the other way round in the case of applications in connection with fares. If he comes as an objector he has the advantage of all the documents in front of him before he makes his case. If he initiates an alteration he has to provide himself with the material with which he tries to make his claim to the alteration ; but in any event, in my submission, my learned friend is in no way prejudiced. He will have ample opportunity at the Inquiry of taking any objections and in fact, as you will have noticed if you have read my learned friend's objection, he raises a very large number of points in his notice of objection in various respects. There are no less than nine particular points he submits which start off with the provision of off-peak facilities and a variety of other things which no doubt at the appropriate time the Tribunal will consider.

Then the rest of my learned friend Mr. Lloyd-Jones's argument was an argument which, with great respect to him, involved the use of language which, as I say, I am not proposing to follow. He called attention to a variety of matters which are wholly irrelevant to the problem we are considering today.

My learned friend Mr. MacLaren covered very much the same points, but he put the point forward: If it can be brought under Section 79 it cannot be brought under Section 76. I have already indicated that the suggestion that these two procedures are mutually exclusive is in no way borne out by the Act. I do not propose to say any more in regard to that argument.

My learned friends representing the other objectors raised various points, but little of the argument bore any relation to what Parliament has provided, and for that reason I do not propose to follow it.

May I summarise very shortly in this way: The Act is clear. The Act laid down certain duties on the Commission in regard to charges. Those duties are carried out and have to be carried out by the submission of charges schemes from time to time. There is no limitation of time within which such schemes can be put forward. In certain events not only the Commission but other persons can make application for alteration of the schemes by the procedure under Section 79, but that Section by its very terms and by its reference to the circumstances under which you may have to go back to your Section 76 procedure, makes it perfectly plain that that is a procedure available in certain events but not available in all events. But it is perfectly clear in my submission that under Section 79 Parliament has not stated that you have to adopt that procedure in certain circumstances. It really does it the other way round, because it says if you do adopt that procedure you may find yourself faced with the necessity of having to proceed under the other procedure in due course.

That is, as I said at the outset of my remarks, really an end of the whole matter, and I do not think, unless there are any points on which I can assist the Tribunal, that there is any more I wish to say. I say, with all respect to my learned friend's arguments, that in my submission the matter is really too plain for further amplification and I do not propose to follow up the ridiculous results which might follow if my learned friend's arguments were right. You yourselves heard certain of them this morning, and they do exemplify quite clearly the ridiculous results that would follow in certain events from this interpretation of the Act. The interpretation of the Act in my submission is quite clear, and in my submission the Tribunal has the duty of entertaining this application, of holding the local inquiry into it, and thereafter of giving a decision in regard to the matter.

(*The Chairman*): Do you wish to reply, Mr. Lloyd-Jones?

(*Mr. Lloyd-Jones*): No, but I would just say that I did not mention Section 85, though it has been mentioned twice already. What we are saying today is that the Tribunal has no power that it can exercise in this matter so far as the Tribunal is concerned. Whatever duty may rest upon the Commission we say the Tribunal cannot exercise any power. It is not a question of their not exercising their power at all, but it is a question of their not having any power at all.

(*Adjourned until to-morrow morning at* 11.45.)

TUESDAY, 17th FEBRUARY, 1953

PRESENT :

HUBERT HULL, Esq., C.B.E., (*President*)

A. E. SEWELL, Esq.

J. C. POOLE, Esq., C.B.E., M.C.

JUDGMENT

(*President*): The Judgment, if that be the right name for it, which I am about to deliver has the concurrence of my two colleagues.

On the 7th April, 1951, the British Transport Commission submitted to us a draft Scheme, which related to all the services and facilities for the carriage of passengers and their luggage by rail, road and inland waterway in Great Britain and all cloakroom or left luggage facilities for the storage of passengers' luggage in Great Britain which are from time to time provided by the Railway Executive and the London Transport Executive. On the 27th February, 1952, after an exhaustive and exhausting Inquiry, and after having altered the Scheme as submitted in a number of important respects, we confirmed it.

As confirmed by us it came into operation in two stages; the provisions affecting what I may call the London Area came into effect on the 2nd March, 1952, and the remaining provisions came into effect on the 1st May, 1952.

On the 5th January of this year, that is to say, less than 12 months since any part of the 1952 Scheme had come into effect, the Commission submitted to us an application having annexed to it a document described as a draft Charges Scheme. The proposals—I am deliberately here using a neutral word—put forward by this document, stated summarily, were: First, that the 1952 Scheme should be revoked; secondly, that in the case of the majority of the fares and charges which were specifically regulated by the 1952 Scheme, the maxima imposed by that 1952 Scheme should be increased.

Public notice of this application was given on the 9th January of this year, and that public notice attracted 94 objections. I may perhaps usefully interpolate here that I am not, for the purpose of this discussion, distinguishing between the Objectors who had a *locus standi* within the meaning of the provisions of the Act and those who had not. The Objectors included the City of London, the London County Council, 23 other County Councils, and five County Boroughs.

The London County Council and 11 other Objectors included in their objections contentions which go to the jurisdiction of the Tribunal, and on the application of the London County Council, the Commission consenting, it was decided that these preliminary objections going to our jurisdiction should be heard before the date which has already been fixed for the opening of the Public Inquiry.

Yesterday we heard Mr. Lloyd-Jones representing the London County Council; Mr. MacLaren representing, as we understood, the East Ham Corporation, the West Ham Corporation and the South-West Essex Traffic Advisory Committee; Mr. Turner-Samuels representing the London Trades Council; Mr. Osmond Turner representing the London Passengers Association, and Mr. Luxton representing the Association of British Chambers of Commerce. In reply to those Objectors we heard Mr. Willis representing the Transport Commission. The other five Objectors who had raised the same kind of objections either did not appear before us, or, if they were present, did not seek to address us; and we assume, as we are bound to assume, that they were content to adopt silently, or by their silence to take advantage of, the arguments addressed to us by the seven Objectors who were good enough to assist us with their observations.

I think it is necessary, in order to understand or attempt to understand the objections with which we have to deal, to refer briefly to the material sections of the Act, namely, those which begin with Section 76 and end with Section 80.

Section 76, the side-note to which is "Charges Schemes", imposed upon the Commission the duty within two years from the passing of the Act or such longer period as the Minister may allow—and the Minister has, as we all know, allowed a longer period—to prepare and submit to us either a draft Scheme or a series of draft Schemes which, taken together if there are more than one, determine the charges to be made by the Commission in the case of all the services and facilities they provide, which are specified in paragraphs (*a*) to (*c*) of subsection (1) of Section 2 of the Act; and the passenger services with which we are concerned are, of course, within those services specified in that Section. It is to be observed that there is no obligation on the Commission to deal in one Scheme with all of a group of services and facilities; no duty to apply that obligation to the particular group of facilities with which we are concerned is imposed upon them to deal with all passenger fares in one document. It would be *intra vires* the Section for a Scheme to be submitted, to take an example, which dealt simply and curtly with, let us say, the Continental boat fares; or indeed to take a more extreme example, it would have been *intra vires* Section 76 for a Scheme to be submitted which said bluntly and crudely that everyone who uses the passenger services of the Commission should pay 5s. 0d. a mile. It would be difficult to justify, but such a Scheme could not be said to be *ultra vires* the powers concerned by reason of the duty imposed in Section 76.

Section 77 provides what may be in a Charges Scheme, and so much has been said about the importance of the style and pattern of a Charges Scheme that it may be well to state somewhat crudely that the purpose of a Charges Scheme is to determine the charges which are to be made. Section 77 provides what may be contained in a Charges Scheme, and for the present purposes the most important part of Section 77 is subsection (2), which is in these words: "A charges scheme may revoke or amend any previous charges scheme".

If it had not been for that provision, it would have been impossible for the Commission, once a Scheme was in operation, to do anything about it except by way of alterations made either under Section 79 or as the result of a review under Section 80, because no assistance could have been gained from the Interpretation Act, which does provide a similar power in the case of Rules, Regulations and Bye-laws, if I remember the words aright.

The real question raised by the Objection with which we are concerned is whether the draft document submitted to us is *ultra vires* these two Sections, Section 76 and 77.

Section 78 prescribes the procedure which is to be followed when a draft Scheme has to be submitted; all I need say about it is that by subsection (4) there must be a Public Inquiry, and a Public Inquiry into the draft Scheme as a whole; secondly, that after this Public Inquiry we may either decline to confirm it, or confirm it as submitted, or alter it in any such way as we think fit, and having so altered it, to confirm it.

Section 79 deals with an existing draft Scheme and provides the mode in which what the Section describes as "alterations" can be made in it; and an existing Scheme may be modified. It is to be observed that under Section

79 applications for alteration can be made, not only by the Commission, but by a number of other bodies or persons; it is sufficient to say of those other bodies or persons that they must be persons who would be affected by the alteration which is put forward. That power given to the Commission and to those other bodies is limited by a proviso in a somewhat unusual form, which provides that we shall not entertain an application made under this Section if less than twelve months have elapsed since the coming into force of the Scheme which it is sought to alter, or—I leave out the second proviso—if in our opinion the alteration which it is sought to make is one which, owing to its magnitude, ought not to be made except by an amending Scheme or as the result of such a review as is provided for by Section 80.

The effect of the third of the three parts of that proviso is that if some body other than the Commission proposes an alteration which in our view is excessive in its magnitude, we cannot entertain it, and it cannot be proposed by anyone other than the Commission by an amending Scheme or cannot be affected otherwise than by us as the result of a review ordered by the Minister under Section 80.

The other point to be noticed about this section—and it is an important one—is that the procedure to be followed when an admissible application is received is a limited one; it will not extend to the whole of the Scheme which is sought to be altered, but it is limited to the particular alteration or alterations which have been put forward. In that respect, of course, it offers a considerable advantage to the Commission, in that it will not be necessary, when they are proceeding under Section 79 with an admissible alteration, to justify before us the whole of the Scheme; they need justify only the particular alterations which they seek to effect.

Of Section 80 I need say no more than this, that the only person who can call that Section into operation is the Minister, and if the Minister does require us to review a Scheme, we must review it at a Public Inquiry. Having reviewed it, we are empowered to determine what alterations, if any, as the result of that review, are necessary in the Scheme under review. I think that is a sufficient disquisition on the general effect of these material sections.

The argument addressed to us in support of the contention that we have no jurisdiction to deal with the document which has been lodged took various forms. The crudest was that stated in the London County Council's formal Objection, namely: "This application is not an application for a confirmation of a charges scheme within the meaning of sections 76, 77 and 78 of the Transport Act, 1947. It is an application for the alteration of the British Transport Commission (Passenger) Charges Scheme 1952. The application is not one which the Transport Tribunal can entertain by reason of the provisions of section 79, subsection (1) of the Transport Act, 1947, the application having been made by the Applicants less than twelve months after the coming into force of the scheme of 1952".

The answer to the contention so stated may, I think, although it may sound impolite, be stated in one sentence only; namely, that this is not an application for the alteration of the 1952 Scheme. Whatever else it is, it is not that, and it is not an application for the alteration of the 1952 Scheme within Section 79, because it could not be. It could not be an application under that section, because it provides for the revocation of a previous Scheme.

As we understood him, Mr. Lloyd-Jones put the London County Council's case in a less crude way; what he said, put summarily, was that the only way in which such changes as the Commission desired to bring about was by an application for alteration under Section 79. Put metaphorically, his contention was not that the Commission were on the right road but had started too soon, but that they had chosen the wrong road altogether; and more precisely, that that which they called a draft Scheme would, if confirmed, be *ultra vires* the powers conferred in Section 78 by Sections 76 and 77. Put in this way, the Objection raises the only question which in our view is capable of serious discussion.

The answer to the Objection put in this way, which was made on behalf of the Commission, was: Whether it be true or not that the changes in the maxima sought by the Commission could be effected by an application for an alteration, it is untrue to say that there is no other way by which those maxima could be altered, and that on the contrary they can properly be effected by a new Charges Scheme.

The question really turns upon the extent of the powers given by Sections 76 and 77. The effect of the proposals, if they are confirmed as submitted, will, as I have already indicated, be first to revoke the 1952 Scheme; and secondly, to re-enact it with modifications, increasing the maxima chargeable for certain of the services provided by the Commission. The question is: Would a Scheme which had this effect be *ultra vires* the Sections? In so far as the new proposals would, if confirmed, revoke the previous one, there could be no possible question, because Section 77, sub-section (2) provides expressly that one Scheme may revoke a previous Scheme. Therefore, one is left with the question of whether a Scheme, which merely re-enacts, with such modifications as I have mentioned, a previous Scheme, is *ultra vires* Sections 76 and 77.

To my mind the question can be decided in quite a simple way. Suppose this were the first passenger Scheme and the present proposals minus the revocation paragraph were submitted as a draft Scheme, could it be possibly said that, if confirmed, that would be *ultra vires* the two Sections? And if it be conceded—and I think Mr. Lloyd-Jones found it at least difficult not to concede—that that would be *intra vires* if that were a new Scheme—a first Scheme—how can it be said that the addition of the paragraph expressly permitted by Section 77, sub-section (2), revoking the previous Scheme makes any difference? It seems to us that if there be such a thing, it is plain that the proposals submitted would, if confirmed, be *intra vires* Sections 76 and 77; and there being no limitation of time upon the exercise of the powers conferred by the Section, we are bound to entertain the draft.

It follows, therefore, that we have jurisdiction and that the Inquiry must proceed.

(*Mr. Lloyd-Jones*): If you please, Sir. There are, as I understand it, provisions which are applicable in a matter of this kind to a possible appeal. I do not know whether I need your consent, but if I do, may I ask you for leave to appeal? Together with my friends, I have taken the view that in fact I do not need such leave; but in order to be entirely satisfied that every contingency has been covered, would you be good enough to say that we have leave to appeal to the Court of Appeal?

(*President*): If there be an appeal, and if you require our leave to appeal, you may certainly have it, Mr. Lloyd-Jones.

(*Mr. Lloyd-Jones*): If you please, Sir; I am much obliged.

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